SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

HEART OF ATLANTA MOTEL, INC., A GEORGIA CORPORATION, PLAINTIFF,

vs.

THE UNITED STATES OF AMERICA AND ROBERT F. KENNEDY AS THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

3-Judge Case
9017
(Tuttle, Hooper & Morgan)

Jury Trial Demanded
Docket Closed

HEART OF ATLANTA MOTEL, INC., a Georgia Corporation,

vs.

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY, as the Attorney General of the United States of America.

Basis of action:

Complaint for declaratory judgment, for temporary and permanent injunction—Civil Rights Act of 1964 Jury trial claimed by Plaintiff on July 7, 1964

For Plaintiff:

Moreton Rolleston, Jr.
1103 C & S Nat'l Bk Bldg.
Atlanta, Ga. 30303
(JA 3-1566)

For Defendant:

Chas. L. Goodson, U.S. Atty.
Robert F. Kennedy, Atty. Gen.
Burke Marshall, Asst. Atty. Gen.
St. John Barrett, Atty.,
Depart. of Justice

J.S. 5 Card—7-2-64
J.S. 6 Card—7-22-64

7-22-64 Opinion denying complaint and issuing injunction in favor of deft.

[fol. 2]

Docket Entries

Jury Trial Demanded
Closed

DATE	FILINGS—PROCEEDINGS
July 2, 1964	Complaint filed.
July 6, 1964	Summons issued and delivered to U.S. Marshal.
July 6, 1964	Order that defendant Robert F. Kennedy show cause on 7-17-64 at 10:00 A.M., filed. Served with complaint. Notice to JSW.
July 6, 1964	Per FAH, set for hearing on Friday, July 17, 1964 at 10:00 A.M., counsel and parties advised by notice.
July 7, 1964	Letter to Judge Hooper advising this is a three judge case. (Per Judge Tuttle)
	Order of Hon. Elbert P. Tuttle, Chief Judge of the Fifth Circuit, U.S.C.A., designating three judge court composed of Judges Tuttle, and Hooper and Morgan, U.S. District Judges—filed. Copy of order and complaint to three judges.
	Pltf's. Demand for Jury Trial—filed. Copy to 3 judges.
July 8, 1964	Marshal's return on service of complaint executed 7-7-64 as to both defts., filed.
July 10, 1964	Defts.' notice of motion and motion for preliminary injunction, notice of motion and motion to dismiss, with memorandum of points and authorities in support of above two motions; certificate and request for three-judge court; Answer, including first and second counterclaims—filed. Marshal's return of service of

DATE	FILINGS—PROCEEDINGS
	above notice, 2 motions, certificate and answer on pltf.—filed. (Copy of above to 3 judges)
	Order that each party herein file with Clerk before 4:30 P.M. on 7-15-64 a brief statement containing such party's understanding of the issues of fact that will be involved in hearing for injunction set for 9:30 A.M. 7-17-64; suggesting that deft. file response to motion for injunction at same time—filed. Copy to counsel. Copy to 3 judges.
July 15, 1964	Statement of issues of fact by defts., pursuant to order of 7-10-64—filed. Copy to 3 judges.
	Motion of defts. to dismiss SECOND COUNTERCLAIM in its answer—filed. To FAH by counsel (Milano) for order.
	Amendment to complaint, and order allowing same, subject to objections—filed. Copy to 3 judges.
	Pltf's. answer to counterclaims and response to motion for preliminary injunction—filed. Copy to 3 judges.
	Pltf's. statement of issues, pursuant to order of 7-10-64—filed. Copy to 3 judges.
July 16, 1964	Order by Judges Tuttle, Hooper and Morgan allowing defts. to withdraw second counterclaim and Paragraph (c) of its prayer for relief—filed. Copy to counsel. Copy to 3 judges.
	Brief of pltf. in support of complaint and prayers and in opposition to defts.' motion to dismiss complaint—filed. (copy to 3 judges by Mr. Rolleston).
July 27, 1964	Came on for hearing pursuant to Rule Nisi on preliminary injunction. Stipulation of facts, filed. Memo of law of the deft.,

DATE	FILINGS—PROCEEDINGS
	filed. Court took the matter under consideration for a permanent injunction.
July 20, 1964	Supplemental statement of plaintiff, filed. (Copy to 3 judges by plft)
July 22, 1964	Deft's supplemental memorandum of law, filed. Copy to 3 judges.
July 22, 1964	Opinion of court and order enjoining plfts. from refusing to accept Negroes as guests in the motel by reason of their race and make available the goods, services, facilities, privileges and advantages to the guests of the motel; the injunction shall become effective 20 days from hereof, to-wit, August 11, 1964, filed.
[fol. 3]	
July 22, 1964	Plaintiff's notice of appeal, filed. Copies to counsel and Supreme Court.
July 23, 1964	Order that plft. is enjoined from refusing to accept Negroes as guests and making any distinction upon the basis of race or color in the availability of goods, services, facilities, privileges, advantages or accommodations offered or made available to the guests; this injunction shall become effective 20 days from 7-22-64, to-wit, 8-11-64, filed. Copies to counsel.
July 24, 1964	Transcript of proceedings of July 17, 1964, filed.
July 30, 1964	Plaintiff's amended notice of appeal, filed. Copy to counsel.
July 31, 1964	Amendment to notice of appeal as amended, filed. Copy to counsel.

DATE	FILINGS—PROCEEDINGS
Aug. 12, 1964	Certified copy of opinion rendered 8-10-64 by Mr. Justice Black denying applications for stay—received.

A TRUE CERTIFIED COPY

August 12, 1964

B. G. NASH, Clerk

By: SAMMY GODSEY
Deputy Clerk

(Seal)

[fol. 4] [Handwritten notation—Filed in Clerk's Office July 2nd, 1964. 8.55 P.M. by B. G. Nash, Clerk]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

HEART OF ATLANTA MOTEL, INC., a Georgia Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY, as the Attorney General of the United States of America, Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT—Filed July 2, 1964

Jurisdiction and Venue

1. Plaintiff is a Georgia Corporation whose only place of business is in Fulton County, State of Georgia. This action is for a declaratory judgment pursuant to the provisions of the Declaratory Judgment Act set forth in 28 USCA Sections 2201 and 2202. This is also an action seeking a temporary and permanent injunction to prevent the Attorney General from exercising the powers granted unto

him under Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended in 1957 and 1960 and as further amended by the "Civil Rights Act of 1964", Section 206 (a).

Nature of Plaintiff's Business

2. Plaintiff corporation owns and operates a motel which has facilities for sleeping, eating, drinking, swimming and other activities usually carried on in a motel. The name of said motel is Heart of Atlanta Motel and it is located in the city block bounded by Courtland Street, Harris Street, [fol. 5] Piedmont Avenue and Baker Street in Fulton County, Atlanta, Georgia. Plaintiff corporation operates no other business except at this location and owns all of the land on which said motel is built. Said motel's activity is so intermingled with wholly local business and so essentially local in character as to be outside the stream of interstate commerce.

3. Heart of Atlanta Motel rents sleeping accommodations to persons desiring them. Some of the guests of Heart of Atlanta Motel live in Georgia and rent sleeping accommodations from said motel when they come to Atlanta. Some of the guests of Heart of Atlanta Motel live in other states and rent sleeping accommodations from said motel when they visit Atlanta.

4. When Heart of Atlanta Motel rents sleeping accommodations to a guest who has come from another state, that guest has literally and legally "come to rest"; his interstate movement is completed by the time he reaches the premises of the Motel; and he has ceased to be in the stream of interstate commerce when he crosses the threshold of Heart of Atlanta Motel.

5. Heart of Atlanta Motel has refused and intends to refuse to rent sleeping accommodations to persons desiring said accommodations, for several different reasons, one of which is based on the ground of race, unless ordered by this Court to comply with the provisions of the Civil Rights Act of 1964.

Controversy

6. Heart of Atlanta Motel has never rented sleeping accommodations to members of the Negro race, is not now renting sleeping accommodations to members of the Negro [fol. 6] race and does not intend to do so unless ordered by this Court to comply with the provisions of the Civil Rights Act of 1964. Plaintiff contends and shows to this Court that said Civil Rights Act of 1964 is unconstitutional and that, even if said Civil Rights Act of 1964 be held to be constitutional, plaintiff corporation is not engaged in interstate commerce and its operations do not affect interstate commerce.

7. Section 206 (a) of said Civil Rights Act of 1964 provides as follows:

> "Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described."

Plaintiff corporation shows to the Court that the President of the United States has stated that the Civil Rights Act of 1964 shall be enforced by the United States and that unless the Attorney General of the United States, one [fol. 7] of the defendants herein, is restrained and enjoined from enforcing said unconstitutional act and from interfering with plaintiff's trade and business, plaintiff corporation will suffer irreparable damages.

8. Before the Civil Rights Act of 1964 became law, plaintiff corporation owned the fee simple title to Heart of Atlanta Motel and the land upon which it is located. Before the adoption of said Act, plaintiff corporation operated its motel in any way it deemed fit, provided it complied with local ordinances and statutes of the State of Georgia pertaining to the protection of the health of the guests of said motel. Before the adoption of said Act, plaintiff corporation made use of its land in any way it saw fit in its own discretion, subject only to local laws pertaining to health and pertaining to zoning. Before the adoption of said Act, plaintiff corporation picked and chose its guests from those people it considered to be compatible with the other guests of said motel and excluded Negro guests because plaintiff corporation determined that such exclusion was in the best interest of plaintiff's business and was necessary to protect plaintiff's property, trade, profits and reputation.

9. The Civil Rights Act of 1964 prohibits plaintiff corporation from exercising and enjoying the full rights inherent in the private ownership of private property in that said Act prohibits plaintiff corporation from doing now those things enumerated hereinabove in paragraph eight which it had the right to do before said Act became law. Said Civil Rights Act of 1964 deprives plaintiff corporation of liberty and property without due process of law, in violation of the Fifth Amendment to The Constitution of the United States. Defendant United States of America has taken for public use part of the rights of plaintiff corporation in and to its private property, without any compensa-
[fol. 8] tion, in violation of the Fifth Amendment to The Constitution of the United States, which reads in part as follows:

> "... nor (shall any person) be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

10. Section 201 (a) of the Civil Rights Act of 1964 appropriates and takes for public use by all persons part of the private rights of plaintiff corporation in and to its private property, the Heart of Atlanta Motel. Said Section 201 (a) reads as follows:

> "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

11. The Civil Rights Act of 1964, Section 201 (b) provides that said Act applies to any motel "if its operations affect commerce". Section 201 (c) defines an establishment whose operations affect commerce as being, among other types of business, "any motel". Taking both of said sections together, said Act declares that the operations of any motel affect commerce and in doing so said Act unconstitutionally exceeds the grant to Congress by Article I, Section 8, Clause 3 of the Constitution of the United States of America, which is set forth hereinafter, of the power to regulate commerce among the several states, to wit:

> "*Powers of Congress.* The Congress shall have Power.
>
> 3. *Commerce.* To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

[fol. 9] 12. The value of the liberty taken by the defendant United States of America from plaintiff corporation is priceless, but this plaintiff corporation shows that it should be compensated in an amount of not less than Ten Million ($10,000,000.00) Dollars. The value of the rights of plaintiff corporation in and to its private property, which have been taken by the United States of America, without any compensation, is One Million ($1,000,000.00) Dollars.

13. More than ninety-five (95%) percent of all the past guests of Heart of Atlanta Motel prefer not to rent sleeping accommodations at said motel if members of the Negro

race also rent sleeping accommodations at said motel. A majority of the guests at said motel, who account for more than fifty (50%) percent of the income to said motel, are guests who have previously rented sleeping accommod - tions at said motel, said guests being referred to a: "repeat guests". Plaintiff corporation shows and contends that if the Attorney General of the United States, one of the defendants herein, is permitted to enforce the provisions of the Civil Rights Act of 1964 as to the plaintiff corporation and its motel, plaintiff corporation will lose a large percentage of its customers, income and good will and will suffer irreparable damages.

Wherefore, Plaintiff prays and demands:

1. That Robert F. Kennedy, as the Attorney General of the United States of America, be temporarily and permanently restrained and enjoined from enforcing said Civil Rights Act of 1964 against plaintiff corporation, Heart of Atlanta Motel, Inc.

[fol. 10] 2. Judgment in the sum of Eleven Million ($11,000,000.00) Dollars against the United States of America, together with reasonable attorney fees for the prosecution of this action, and all costs.

Moreton Rolleston, Jr., 1103 Cit. & Sou. National Bank Building, Atlanta, Georgia 30303, JAckson 3-1566, Attorney for Plaintiff.

[fol. 11] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

ORDER TO SHOW CAUSE—July 6, 1964

The petition in the above and foregoing complaint having been read and considered, it is hereby ordered that

(~~Robert F. Kennedy, as the Attorney General for the United States of America, be and he is hereby restrained from enforcing the provisions of the Civil Rights Act of 1964 against Heart of Atlanta Motel, Inc. until further order of this Court; and that~~) said Robert F. Kennedy, as the Attorney General of the United States of America, is hereby ordered to show cause before me on the 17th day of July at 10:00 A.M., 1964 why the prayers of the plaintiff corporation for permanent injunction should not be granted.

This 6th day of July, 1964.

Frank A. Hooper, Judge, United States District Court for the Northern District of Georgia.

[fol. 12]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action File No. 9017

HEART OF ATLANTA MOTEL, INC.,
a Georgia Corporation, Plaintiff,

v.

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY, as the Attorney General of the United States of America, Defendants.

SUMMONS AND ORDER TO SHOW CAUSE

To the above named Defendants:

You are hereby summoned and required to serve upon Moreton Rolleston, Jr. plaintiff's attorney, whose address is 1103 C & S National Bank Building, Atlanta, Georgia an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so,

judgment by default will be taken against you for the relief demanded in the complaint.

B. G. Nash, Clerk of Court, Forrest L. Martin, Deputy Clerk.

[Seal of the Court]

Date: July 6th, 1964

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 12a]

I hereby certify and return that I have this July 7th, 1964 mailed by certified mail a copy of the within Summons & Complaint and Order to the Attorney General, Washington, D. C.

W. J. Andrews, U. S. Marshal, By: Rosalie Rich.

Return on Service of Writ

I hereby certify and return, that on the 7th day of July 1964, I received this summons and served it together with the complaint and order herein as follows:

and on July 7th 1964 I served United States of America and Robert F. Kennedy as the Attorney General of the United States of America by handing to and leaving with Gus Wood Assistant U. S. Attorney a true copy of the within Summons and Complaint and order at his office in Federal Bldg., Atlanta, Ga. this 7th day of July 1964.

W. J. Andrews, United States Marshal, By Joe M. Allen, Deputy United States Marshal.

Marshal's Fee

Travel ..... $.....
Service 6.00

$6.00

Subscribed and sworn to before me, a ..... this ..... day of ....., 19.....

[Seal]

[Stamp—Filed in Clerk's Office, July 8, 1964, B. G. Nash, Clerk, By: S G Deputy Clerk]

By: S G Deputy Clerk.

8436

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[fol. 13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

HEART OF ATLANTA MOTEL, INC.,
a Georgia corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY, as the Attorney General of the United States of America, Defendants.

AMENDMENT TO COMPLAINT FOR DECLARATORY JUDGMENT—
Filed July 15, 1964

Now Comes Heart of Atlanta Motel, Inc., the corporate plaintiff in the above styled case, and with leave of Court having first been obtained, amends its Complaint heretofore filed in the following manner:

1.

By adding the following paragraph which shall be known as Paragraph 14, as follows:

> The Civil Rights Act of 1964 is unconstitutional in that it imposes involuntary servitude upon the corporate plaintiff in violation of the thirteenth amendment to the Constitution of the United States which reads as follows:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

[fol. 14] 2.

By adding the following paragraph which shall be known as Paragraph 15, as follows:

The Civil Rights Act of 1964 is unconstitutional in that it deprives the plaintiff corporation of its freedom to contract in violation of that portion of the Fifth amendment to the Constitution of the United States which is quoted hereinabove in paragraph 9 of the original complaint.

Wherefore, Plaintiff prays:

1.

That this amendment be allowed, subject to the objections of the defendants.

2.

That the Civil Rights Act of 1964 be declared unconstitutional.

Moreton Rolleston, Jr., 1103 Cit. & Sou. Bank Building, Atlanta, Georgia 30303, JAckson 3-1566, Attorney for Plaintiff.

[fol. 15] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

ORDER ALLOWING AMENDMENT TO COMPLAINT—
July 15, 1964

The foregoing amendment to the original Complaint filed in the above styled case is hereby allowed, subject to the objections of the defendants.

This 15th day of July, 1964.

Frank A. Hooper, Judge, United States District Court for the Northern District of Georgia, Atlanta Division.

[fol. 16] Certificate of Service (omitted in printing).

[fol. 17] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

PLAINTIFF'S STATEMENT OF ISSUES—Filed July 15, 1964

In response to the Order of this Court, dated July 10, 1964, that the parties file a brief statement of the issues of fact that will be involved in the hearing for injunction now set for 9:30 o'clock AM, July 17, 1964, the corporate plaintiff respectfully submits the following:

1.

The answer of the defendants, by paragraph 3, admitted all well pleaded allegations of fact contained in the Complaint, except the following sentence set forth in paragraph 2 of the complaint:

> "Said motel's activity is so intermingled with wholly local business and so essentially local in character as to be outside the stream of interstate commerce."

and the following portion of paragraph 9 of the Complaint:

> "Defendant United States of America has taken for public use part of the rights of plaintiff corporation in and to its private property."

[fol. 18] 2.

Plaintiff corporation intends to show that there is located within the Heart of Atlanta Motel a restaurant, which is owned and operated by Interstate Hosts, Inc. whose address is 11255 West Olympic Boulevard, Los Angeles 64, California, and that it is not the policy and practice of this restaurant to refuse to sell food and provide service in the restaurant to Negroes because of their race and color and that, since the Civil Rights Act of 1964 became law, this restaurant has served all Negroes who have asked for service. Furthermore, plaintiff corporation intends to show that it leases the restaurant space to Interstate Hosts, Inc. and has no legal control over whom the restaurant shall serve and that it has agreed in principle with Interstate Hosts, Inc. that Negroes shall be served in the restaurant.

Moreton Rolleston, Jr., 1103 Citizens & Southern Nat'l Bk. Bldg., Atlanta, Georgia 30303, JAckson 3-1566, Attorney for Plaintiff.

[fol. 19] Certificate of Service (omitted in printing).

[fol. 20] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

[Title omitted]

STIPULATION OF FACTS—Filed July 17, 1964

It is stipulated by and between the Plaintiff and the Defendants that:

1.

Plaintiff owns and operates the Heart of Atlanta Motel in Atlanta, Georgia. The motel has 216 rooms for lease or hire to transient guests.

2.

Through various national advertising media, including magazines having national circulation, the Plaintiff solicits patronage for the motel from outside the State of Georgia.

3.

The Plaintiff accepts convention trade from outside the State of Georgia.

4.

Approximately 75% of the total number of guests who register at the motel are from outside the State of Georgia.

[fol. 21]

5.

Plaintiff maintains over fifty billboards and highway signs advertising the motel on highways in Georgia.

Signed: This 16th day of July, 1964, By: Moreton Rolleston, Jr., On Behalf of Plaintiff.

Signed: This 16th day of July, 1964, By: St. John Barrett, On Behalf of Defendants.

[fol. 22] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

[Title omitted]

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION—Filed July 10, 1964

To Heart of Atlanta Motel, Inc., Plaintiff, and Moreton Rolleston, Jr., Attorney for Plaintiff:

Please take notice that on July 17, 1964, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the United States District Court for the Northern District of Georgia in the United States Post Office and Courthouse, Atlanta, Georgia, the defendants will move the Court for a preliminary injunction, pending the trial upon their first and second counterclaims, enjoining the Heart of Atlanta Motel, Inc., its successors, officers, attorneys, [fol. 23] agents and employees, together with all persons in active concert or participation with them, from:

(a) Refusing to accept Negroes as guests in the motel by reason of their race or color;

(b) Making any distinction whatever upon the basis of race or color in the availability of the goods, services, facilities, privileges, advantages or accommodations offered or made available to the guests of the motel or to the general public within or upon any of the premises of the Heart of Atlanta Motel; and

(c) Failing or refusing to sell food and meals in the restaurant or to provide service to Negroes in the restaurant upon the same basis and in the same manner as food, meals and service are made available to white patrons; and,

(d) Otherwise violating in any manner or by any means the provision of Title II of the Civil Rights Act of 1964 with respect to the operation of the motel or of any facilities located within the premises of the motel.

This motion will be based upon all of the pleadings and other documents on file in this case and upon oral testimony and other evidence to be offered at the hearing.

[fol. 24] United States of America and Robert F. Kennedy, Attorney General of the United States, Defendants, By: Burke Marshall, Assistant Attorney General, Charles L. Goodson, United States Attorney.

[fol. 25] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

HEART OF ATLANTA MOTEL, INC.,
a Georgia Corporation, Plaintiff,

v.

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY, as the Attorney General of the United States of America, Defendants.

DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS—Filed July 10, 1964

To Heart of Atlanta Motel, Inc., Plaintiff and Moreten Rolleston, Jr., Attorney for Plaintiff:

Please take notice that on July 17, 1964, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the court-

room of the United States District Court for the Northern District of Georgia, in the United States Post Office and Courthouse, Atlanta, Georgia, the defendants will move the Court for an order dismissing the complaint in this case upon the following grounds:

[fol. 26] 1. The complaint fails to state facts upon which relief can be granted.

2. The United States of America has not consented to be sued.

3. The Court lacks jurisdiction of a claim against the United States in excess of $10,000.

United States of America and Robert F. Kennedy, Attorney General of the United States, Defendants, By: Burke Marshall, Assistant Attorney General, Charles L. Goodson, United States Attorney.

[fol. 27] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

CERTIFICATE AND REQUEST FOR THREE-JUDGE COURT—
Filed July 10, 1964

Robert F. Kennedy, Attorney General of the United States, requests, pursuant to Section 206(b) of the Civil Rights Act of 1964, that a court of three judges be convened to hear and determine the above-captioned case.

The Attorney General of the United States certifies that in his opinion the above-captioned case is one of general public importance.

Robert F. Kennedy, Attorney General of the United States.

[fol. 28] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

[Title omitted]

ANSWER AND COUNTERCLAIMS—Filed July 10, 1964

The United States of America and Robert F. Kennedy, defendants, answer the complaint as follows:

1. The defendants deny the allegation contained in the last sentence of paragraph 2 of the complaint that the activity of the Heart of Atlanta Motel is so intermingled with solely local business and so essentially local in character as to be outside the strain of interstate commerce.

2. The defendants deny the allegation contained in paragraph 9 of the complaint that the United States of America has taken for public use part of the rights of the plaintiff in and to its private property.

3. The defendants admit all other well pleaded allegations of fact contained in the complaint.

[fol. 29] First Defense

The complaint fails to state a claim against the defendants upon which relief can be granted.

Second Defense

The United States has not consented to be sued by the plaintiff.

Third Defense

This Court lacks jurisdiction to entertain the plaintiff's claim for damages against the United States in excess of $10,000.

First Counterclaim

The United States of America and Robert F. Kennedy allege as a counterclaim against the plaintiff:

1. This counterclaim is asserted by the Attorney General and the United States pursuant to Section 206(a) of the Civil Rights Act of 1964 and Rule 13 of the Rules of Civil Procedure.

2. This Court has jurisdiction of this counterclaim under Section 207(a) of the Civil Rights Act of 1964 and under 28 U.S.C. 1345.

[fol. 30] 3. The Heart of Atlanta Motel, which is owned and operated by the plaintiff as alleged in paragraph 2 of the complaint, provides lodging for transients and has over two hundred rooms for rent or hire. It is a place of public accommodation within the meaning of Section 201(b) of the Civil Rights Act of 1964 and its operations affect commerce within the meaning of Section 201(c) of the Act.

4. Plaintiff has refused, is refusing and has announced that, unless enjoined by this Court, it will continue to pursue its policy of refusing accommodations in the Heart of Atlanta Motel to Negroes on account of their race or color.

5. The acts and practices set forth in the preceding paragraph constitute a pattern and practice of resistance to the full enjoyment by Negroes of the right, secured by Title II of the Civil Rights Act of 1964, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the Heart of Atlanta Motel, without discrimination or segregation on the ground of race or color, and such pattern or practice is of such a nature and is intended to deny the full exercise of such right.

[fol. 31] Second Counterclaim

The United States of America and Robert F. Kennedy allege as a second and further counterclaim against the plaintiff:

6. The defendants re-allege each of the facts and matters set forth in paragraphs 1 through 5 of their first counterclaim.

7. Physically located within the premises of the Heart of Atlanta Motel is a restaurant, owned and operated by the plaintiff, which serves the public and holds itself out as serving patrons of the Heart of Atlanta Motel.

8. The restaurant described in paragraph 7 herein is principally engaged in selling food for consumption on its premises and it serves and offers to serve interstate travelers and a substantial portion of the food and other products which it sells has moved in commerce.

9. The restaurant described in paragraphs 7 and 8 is a place of public accommodation within the meaning of Section 201(b) of the Civil Rights Act of 1964, and its operations affect commerce within the meaning of Section 201(c) of the Act.

10. It is the policy and practice of the plaintiff to refuse to sell food and provide service in the restaurant to Negroes because of their race and color.

11. The acts and practices set forth in the preceding paragraph constitute a pattern and practice of resistance to the full enjoyment by Negroes of the right, secured by Title II of the Civil Rights Act of 1964, to the full [fol. 32] and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the Heart of Atlanta Motel, without discrimination or segregation on the ground of race or color, and such pattern or practice is of such a nature and is intended to deny the full exercise of such right.

Wherefore, the defendants pray that this Court enter an order enjoining the Heart of Atlanta Motel, Inc., its successors, officers, attorneys, agents and employees, together with all persons in active concert or participation with them, from:

(a) Refusing to accept Negroes as guests in the motel by reason of their race or color;

(b) Making any distinction whatever upon the basis of race or color in the availability of the goods, services,

facilities, privileges, advantages, or accommodations offered or made available to the guests of the motel or to the general public within or upon any of the premises of the Heart of Atlanta Motel;

(c) Failing or refusing to sell food and meals in the restaurant or to provide service to Negroes in the restaurant upon the same basis and in the same manner as food, meals and service are made available to white patrons; and,

[fol. 33] (d) Otherwise violating in any manner or by any means the provision of Title II of the Civil Rights Act of 1964 with respect to the operation of the motel or of any facilities located within the premises of the motel.

Plaintiffs further pray for their costs of suit and for such further and additional relief as the interest of justice may require.

United States of America, and Robert F. Kennedy, Attorney General of the United States, Defendants, By: Robert F. Kennedy, Attorney General, Burke Marshall, Assistant Attorney General, Charles Goodson, United States Attorney, St. John Barrett, Attorney, Department of Justice.

[fol. 34] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

ANSWER TO COUNTERCLAIMS AND RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION—Filed July 15, 1964

Heart of Atlanta Motel, Inc., plaintiff, answers the First Counterclaim of the defendants as follows:

1.

The allegations of paragraphs 1 and 2 of the First Counterclaim are denied and plaintiff further shows that this honorable Court has already acquired jurisdiction by virtue of the Complaint filed by the plaintiff.

2.

Plaintiff denies the allegations of paragraph 3 of the First Counterclaim which reads as follows:

> "It is a place of public accommodation within the meaning of Section 201(b) of the Civil Rights Act of 1964 and its operations affect commerce within the meaning of Section 201(c) of the Act."

[fol. 35]

3.

Plaintiff denies the allegations contained in paragraph 4 of the First Counterclaim where it is alleged that "the plaintiff is refusing" accommodations to Negroes on account of their race or color.

4.

Plaintiff admits the allegations of paragraph 5 of the First Counterclaim except the reference to that portion of paragraph 4 of said First Counterclaim pertaining to "is refusing" and except that plaintiff also denies that Title II of the Civil Rights Act of 1964 secures to Negroes the right to use any of the goods, services, facilities, privileges, advantages and accommodations of Heart of Atlanta Motel. Plaintiff further denies that the restaurant located within Heart of Atlanta Motel, if construed to be a facility of Heart of Atlanta Motel, is refusing to serve Negroes on the grounds of race or color.

Answer to Second Counterclaim

5.

The plaintiff denies the allegations of paragraph 6 of the Second Counterclaim in the same manner, and verbatim, as it denied the allegations of paragraphs 1, 2, 3, 4 and 5 of the First Counterclaim.

6.

Plaintiff denies that it owns and operates a restaurant in Heart of Atlanta Motel and shows to the Court that said restaurant is owned and operated, under a lease from plaintiff corporation, by Interstate Hosts, Inc., whose address is 11255 West Olympic Boulevard, Los Angeles 64, California.

7.

Plaintiff admits the allegations of paragraph 8 of the [fol. 36] Second Counterclaim except it shows to the Court that it can neither admit nor deny, for lack of information, the following quoted portion of said paragraph 8:

> " . . . it serves and offers to serve interstate travelers and a substantial portion of the food and other products which it sells has moved in commerce."

8.

Plaintiff denies the allegations of paragraphs 9, 10 and 11 and plaintiff further shows to the Court that said restaurant has served all Negroes, being three in number upon information and belief, who have applied for service since the Civil Rights Act of 1964 became law.

First Defense

The First and Second Counterclaims fail to state a claim against the plaintiff upon which relief can be granted in that the Civil Rights Act of 1964 is unconstitutional and violates the Fifth and Thirteenth Amendments to the Constitution of the United States as well as Article I, Section 8, Clause 3 of the Constitution of the United States of America.

In Response to the Motion for Preliminary Injunction Plaintiff Shows to the Court as Follows:

9.

Defendants are entitled to no injunction of any kind against the operation of the restaurant in Heart of Atlanta

Motel, even if the Civil Rights Act of 1964 is constitutional, in that the restaurant is not refusing service to Negroes and has in fact served Negroes on an equal basis with other guests.

[fol. 37] 10.

Defendants are not entitled to a preliminary injunction against the plaintiff corporation because the Civil Rights Act of 1964, upon which the defendants rely, is unconstitutional.

Wherefore, plaintiff prays:

1.

That the First Counterclaim and the Second Counterclaim of the defendants be dismissed.

2.

That the Motion of the defendants for a Preliminary Injunction be denied.

Moreton Rolleston, Jr., 1103 Cit. & Sou. Bank Building, Atlanta, Georgia 30303, JAckson 3-1566, Attorney for Plaintiff.

[fol. 38] Certificate of Service (omitted in printing).

[fol. 39] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

MOTION TO DISMISS SECOND COUNTERCLAIM—
Filed July 15, 1964

The United States of America and Robert F. Kennedy move to dismiss their second counterclaim in the above en-

titled case and to withdraw its prayer for relief in Paragraph (c) of its answer and counterclaim.

United States of America, and Robert F. Kennedy, Attorney General of the United States, Defendants, By: Charles L. Goodson, United States Attorney.

[fol. 40] [File endorsement omitted]

ORDER—Filed July 16, 1964

This Court having read and considered the attached motion of the United States of America and Robert F. Kennedy to withdraw its second counterclaim and Paragraph (c) of its prayer for relief, that motion is hereby granted and it is Ordered that the second counterclaim of the defendants be dismissed.

This the ..... day of July, 1964.

Elbert P. Tuttle, Frank A. Hooper, Dist. Judge, Lewis R. Morgan.

[fol. 41] Certificate of Service (omitted in printing).

[fol. 42]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

HEART OF ATLANTA MOTEL, INC.,

vs.

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY, as The Attorney General of The United States of America.

Transcript of Proceedings—Atlanta, Georgia; July 17, 1964

Before Honorable Elbert P. Tuttle, Honorable Frank A. Hooper, Honorable Lewis R. Morgan, Judges.

APPEARANCES:

For the Plaintiff: Moreton Rolleston, Jr., 255 Courtland Street, N.E., Atlanta, Georgia.

For the Defendants: Burke Marshall, St. John Barrett, Harold Green, Department of Justice, Washington 25, D. C.; Charles L. Goodson, U. S. Attorney, Atlanta, Georgia.

[fol. 44] Judge Tuttle: The Court will call two cases this morning to get responses as to whether the parties are ready to proceed. The first case is Moreton Rolleston, Junior—excuse me—Heart of Atlanta Motel, Incorporated, against The United States and Kennedy, Attorney General. Are you ready to proceed?

Mr. Rolleston: Plaintiff's ready, Your Honor.

Mr. Goodson: If it please the Court, the Attorney General and the Government will be represented in this case by Mr. Burke Marshall, the Assistant Attorney General in charge of the Civil Rights Division, and Mr. St. John Barrett of the Civil Rights Division of the Justice Department.

Judge Tuttle: Glad to have you here, Mr. Marshall.

Mr. Marshall: The Government is ready, Your Honor.

Judge Tuttle: The next case set to be heard this morning is George Willis, Jr., and others against Pickrick Corporation and Lester Maddox, and Attorney General of the United States, Intervenor. Are you ready for the plaintiffs in that case?

Mr. Alexander: The plaintiffs are ready, Your Honor. The plaintiffs will be represented by Mr. Jack Greenberg, Mrs. Connie Baker Motley and myself, William Alexander.

Mr. Marshall: The intervenors are ready.

Judge Tuttle: The defendant, Pickrick Corporation, [fol. 45] Mr. Maddox, represented in Court?

Mr. Schell: Yes, sir.

Judge Tuttle: We were just calling your case, Mr. Schell.

Mr. Schell: We're ready, sir.

Judge Tuttle: For the convenience of the parties and counsel, it would appear that there'll be some element of time, some element of delay before the second case is reached. It's impossible for me to tell now unless—I'll call on the parties in the first case and maybe they can give me an indication. Mr. McRae, we just called the case. I guess we were a minute early.

Mr. McRae: Well, we had a little trouble getting in. There was a kind of blockade and they were separating the wheat from the chaff, so to speak, and—

Judge Tuttle: You mean the lawyers and the parties from those who are not in the case?

Mr. McRae: Yes, sir; that's right. They had a blockade out there.

Judge Tuttle: Yes, sir. You are ready for the plaintiff?

Mr. McRae: We are ready, Your Honor.

Judge Tuttle: In the first case, Mr. Rolleston, will you give us an estimate of about how long you think it necessary for you to take? Are the facts—

[fol. 46] Mr. Rolleston: Your Honor, the facts have been stipulated and I think the government has two witnesses and I don't anticipate my argument to last over a half hour. I have no witnesses.

Judge Tuttle: Right. Mr. Barrett?

Mr. Barrett: I don't believe that the testimony will take more than twenty or thirty minutes, and perhaps twenty

minutes for argument. I would say forty-five minutes for —to an hour for the government's case.

Judge Tuttle: Let's see. That's 9:30 to 11:30. Counsel's estimates are usually rather optimistic. The Court will run through till 12:00 o'clock and take a recess for lunch; and then proceed in the second case. The second case may be excused until one-thirty.

Mr. Barrett: Thank you, sir.

Mr. McRae: Thank you, sir.

Mr. Greenberg: Excuse me, Your Honor. May we be permitted to sit here? Since this is the first case under the Act, I think we might—

Judge Tuttle: Oh, yes. Yes.

Mr. Greenberg: —be able to profit by it.

Judge Tuttle: Yes. Of course. You may proceed then with the first case. Mr. Rolleston, you are the moving party.

Mr. Rolleston: I did want to inquire of the Court if [fol. 47] I am the moving party since they had a motion to dismiss pending. It doesn't make any difference to me.

Judge Tuttle: We take it as the Court normally does as a motion for preliminary injunction and let the movant for the injunction proceed, and then we'll hear from the other side.

Mr. Rolleston: Thank you. If it please the Court, in this case the government has filed an answer in which they have admitted all of the actual facts pleaded in the complaint. They have denied what amounts to two conclusions, legal conclusions in the petition, so in view of that admission, we have no evidence to offer to the Court at this time.

Mr. Barrett: If the Court please, I have a written—

Judge Tuttle: Excuse me a minute, Mr. Barrett.

Mr. Barrett: Yes, sir.

Judge Tuttle: Of course, this doesn't go at all to your contention to being entitled to damages against the United States, does it?

Mr. Rolleston: No, sir; I take it that the real issue before the Court—

Judge Tuttle: Yes.

Mr. Rolleston: —is the legal question of the constitutionality.

Judge Tuttle: All right.

[fol. 48] STIPULATION OF COUNSEL

Mr. Barrett: If the Court please, I have a written stipulation that has been entered into by counsel on both sides.

Judge Tuttle: Will you read it in the record or have it read in the record, please?

Mr. Barrett: Yes; if I may.

It is stipulated by and between the plaintiff and the defendants that,

One, Plaintiff owns and operates the Heart of Atlanta Motel in Atlanta, Georgia. The Motel has 216 rooms for lease or hire for transient guests.

Two, Through various national advertising media, including magazines having national circulation, the plaintiff solicits patronage for the Motel from outside the State of Georgia.

Three; Plaintiff accepts convention trade from outside the State of Georgia.

Four, Approximately 75% of the total number of guests who register at the hotel are from outside the State of Gergia.

Five, Plaintiff maintains over fifty billboards and highway signs advertising the Motel on highways in Georgia.

If I may, I will file the original with the clerk and pass the Court a copy. If the Court please, in view of the defendants by reason of the stipulation, the only issue [fol. 49] of fact remaining as raised by the pleadings is whether or not the plaintiff is refusing accommodations to Negroes; and the testimony which we will offer will be directed solely to that issue.

Judge Tuttle: I understood that Mr. Rolleston asserted that, alleged that in his complaint. Do you conceive that there is still an issue of fact with respect to that matter?

Mr. Barrett: Yes, Your Honor. As I understand the position of the plaintiff, he concedes that it his purpose to refuse accommodations to Negroes; but that he is not refusing and has not refused Negroes on the basis of their race since the enactment of the statute. And inasmuch as that could have a bearing on whether or not there is a pattern or practice of resistance in terms of the Act, we believe that evidence is appropriate on that point.

Judge Tuttle: Well, you may put on your evidence.

Mr. Barrett: The defendants will call Albert Richard Sampson.

ALBERT RICHARD SAMPSON, having first been duly sworn and called as a witness in behalf of the defendants, testified as follows:

Direct examination.

By Mr. Barrett:

Q. Would you state your full name, please?

[fol. 50] A. Albert Richard Sampson.

Q. Where do you live, Mr. Sampson?

A. 339 Holly Street, Apartment 2-B, Northwest, Atlanta, Georgia.

Q. What is your occupation?

A. Executive Secretary of the Atlanta Branch of the NAACP; Associate Editor of the ATLANTA ENQUIRER NEWSPAPER.

Q. Are you a Negro, Mr. Sampson?

A. Yes, I am.

Q. Mr. Sampson, on July 7th of this year, did y · take any steps to make a hotel reservation?

A. Yes, I did.

Q. Would you tell the Court what you did?

A. Well, on July 7th in the afternoon, I telephoned the Heart of Atlanta Motel and made a reservation for Wednesday evening commitment. I then drove to South Carolina with some friends of mine who had to take a car to the Naval Base in Charleston, South Carolina to ship it overseas. I left Atlanta that Tuesday evening and I went to Charleston. And while in Charleston, I wired twelve dollars and thirty-six cents because the man on the phone told me that that's what the price of the room was. I wired it from a Western Union office, twelve dollars and thirty-six cents.

Q. Do you have any receipt for that wire?

A. Yes, I do.

Q. May I see it, please?

[fol. 51] A. From—

Mr. Barrett: If—pardon me—if the Court please, may this be marked for identification?

Clerk: Respondent's Exhibit Number 1 marked for identification is a receipt to Western Union Telegraph Company.

By Mr. Barrett:

Q. Mr. Sampson, I'll show you Respondent's Exhibit Number 1 for identification and ask you if that is the receipt you received from the Western Union—

A. That's correct.

Q. —Telegraph Company?

A. Yes; in Charleston, South Carolina.

Q. Did you return—

A. There was a message on the telegram, "Arriving at seven o'clock."

Q. Did you return to Atlanta?

A. Yes. I flew—

Q. How did you return?

A. I flew in on a Delta Flight 450—I mean at 4:50, Flight 620. This is my baggage stub.

Q. Where did you go when you got into the Atlanta Airport?

A. I got on a shuttle bus and the shuttle bus took us to several hotels, and my ultimate, my final destination was the Heart of Atlanta Motel.

[fol. 52] Q. Did you go in?

A. Yes.

Q. Did you go to the desk?

A. That's correct.

Q. Who was at the desk?

A. A dark haired fellow and a light haired fellow. I don't know their names. I just know that they were at the registration desk.

Q. Will you tell the Court what happened when you got to the desk, what you said and what the men at the desk said?

A. When I got to the desk, I said, "I'm here for the, for the express purpose of getting my room reservation. I wired the money ahead of time." And so they went, and they were looking for my wire. Then the dark haired fel-

low came out and he said to me, "I'm very sorry; but I don't have your wire." Meanwhile, the light haired fellow was taking someone else's reservation, and at that time I saw my name on the list, and I said, "There's my name." And the light haired fellow snatched it away. And then the dark haired fellow saw the Western Union telegram, and at that time he told me that he wouldn't be able to accommodate me because of the fact that they have a suit pending before the courts on this basic issue. And I pointed out to him that "you don't have an argument with me; you have an argument with the Federal Government. [fol. 53] The only thing I know is that I confirmed the reservation you took over the phone, and you have my receipt." And at that point, he said, "I'm very sorry. We can't accommodate you." And I said, "Will you give me my money back?" And he said, "No, I'm not qualified to give you your money back." He said, "I just can't give it to you over the counter." And I said, "I'm not leaving until I get it." I said, "I'll have to call the police because of the fact I've paid you and I think you should give me my money back." So at that time, this gentleman came in and—

Q. Who do you mean when you say "this gentleman?"

A. Mr. Rolleston. He came in and he pointed out to me—he checked both the guest list, my telegram receipt, and he took me over to the side and he pointed out to me that they had, that he had a suit against the Federal Government on this same basic situation and he said that if the courts decide for me to open up, I'll open up; but until then, I can't accommodate any Negroes. And at that time, he gave me my money back and I left the hotel.

Mr. Barrett: No further questions.

Cross examination.

By Mr. Rolleston:

Q. Mr. Sampson, were you treated in a polite, courteous manner when you were there?

[fol. 54] A. Yes.

Q. When you got there, you talked to two men who were in red coats, did you not, who were on the front desk?

A. No—one of them had on a red coat. The other one did not. The light—the dark skinned fellow had on a red coat.

Q. And when I got there, I asked you your name and address, did I not?

A. That's correct.

Q. And what did you tell me?

A. I told you my name was Albert Richard Sampson.

Q. Where did you say you were from?

A. I was from Massachusetts.

Q. But you are from Atlanta?

A. No, I'm from Massachusetts.

Q. Well, where do you live in Atlanta?

A. I live at 339 Holly Street. See, I'm a—I was a student here in Atlanta. Because of financial difficulties, I'm not able to return to school. But my permanent address has always been in Massachusetts.

Q. You were born and raised in Massachusetts?

A. Born and raised, and I maintain my permanent address there. My voter registration is in Massachusetts.

Q. But you are now living in Atlanta?

A. I reside here in Atlanta.

[fol. 55] Q. Was it not also explained to you by myself that we had two policies, Number 1, that as a general rule we took no people of any kind or class who lived in Atlanta; and the other policy which you were explained, that we would not take members of the Negro race until this suit was disposed of?

A. You—your latter statement is correct; but your former statement isn't.

Q. You don't remember me telling you—

A. No.

Q. —that we didn't take people from Atlanta?

A. No, for the simple reason that I didn't tell you I was from Atlanta, because I came in from Charleston, and I was from Massachusetts.

Q. But you didn't tell me you were from Atlanta?

A. You didn't ask me where I was from.

Q. All right.

A. You asked me where I resided. I am from Massachusetts. If you want, I can show you my identification.

Q. I just wanted to know where you were from.
A. Thank you.

Mr. Rolleston: That's all.
Judge Tuttle: You may step down.
Mr. Barrett: Charles Wells.

[fol. 56] CHARLES EDWARD WELLS, having first been duly sworn and called as a witness in behalf of the defendants, testified as follows:

Direct examination.

By Mr. Barrett:

Q. Would you state your full name, please?
A. Charles Edward Wells, Senior.
Q. Where do you live, Reverend Wells?
A. I live at 1096 Main Street, Macon, Georgia.
Q. Where are you living at the present time? Where are you residing?
A. Presently I am residing at 641 Beckwith Street.
Q. In Atlanta?
A. That's correct.
Q. But Macon is your permanent address, permanent residence?
A. That's correct.
Q. Are you employed?
A. Yes, I am employed.
Q. By whom?
A. I'm employed by the United States Post Office.
Q. In what capacity?
A. I'm employed as a clerk.
Q. Are you also a minister?
A. That's correct.
Q. What education have you had, Reverend Wells?
A. I'm a graduate of West Virginia State College, re-
[fol. 57] ceiving a Bachelor of Arts Degree in Psychology and Sociology; presently pursuing a Bachelor of Divinity Degree.
Q. Reverend Wells, I'd like to call your attention to July 11th of this year and ask you if you went to the Heart of Atlanta Motel here in Atlanta on that day?

A. Yes, I did.
Q. Was anyone with you?
A. Yes, a minister friend of mine was with me.
Q. What is his name?
A. The Reverend John H. Gillison.
Q. About what time did you go to the motel?
A. Approximately one o'clock.
Q. What was your purpose in going there?
A. The purpose for going to the motel was to seek accommodations in the motel; a room.
Q. Did you go to the desk?
A. Yes, I did.
Q. Two of you together at that time?
A. That's correct.
Q. Would you just tell the Court what happened when you went to the desk, what you said and what others said while you were there?
A. Well, I went to the desk. I believe I approached the clerk first. And I asked him if he had any vacancies. He told me he would not be able to rent me a room. And I asked him why, and I believe he told me that it was the [fol. 58] policy of the motel not to rent rooms to Negroes until such time as a decision was made on the suit which was pending in the Federal Courts. I then asked to see the manager, and asked him the same question. He gave me the same answer. At that time, the, I assumed it was the owner, appeared and I asked him about the matter and he told me that the motel had adopted a policy not to serve Negro guests until such time—not to rent rooms to Negro guests until such time as a decision was made on the suit that was pending in the Federal Courts. I then asked him if he was telling me that he was failing to comply with the civil rights law that had been passed, and he told me that he wasn't—he told me that the only thing that he was saying is what he had said before, and he repeated that he wasn't renting guests—renting rooms to Negro guests until such time as a decision had been made on the suit that was pending in, in Federal Court.
Q. Have you since learned the name of the person that you spoke to on that occasion?

A. I believe his name is Mr. Morty Rolleston, or something of that nature.

Q. The plaintiff in this case who is seated here at the table?

A. That's correct.

Mr. Rolleston: If it please the Court, I would like to correct counsel. The plaintiff is a corporation.

Mr. Barrett: Yes. I beg your pardon. Yes.

[fol. 59] Judge Tuttle: You don't object to his assumption that you are president of the corporation, do you?

Mr. Rolleston: No, sir.

Judge Tuttle: I believe you allege that, don't you?

Mr. Rolleston: No, sir; I didn't allege that.

Judge Tuttle: You didn't allege that.

Mr. Barrett: No further questions.

Cross examination.

By Mr. Rolleston:

Q. Reverend Wells, when you came to the motel, who else was with you?

A. I believe I answered that question before. The Reverend John H. Gillison.

Q. And when I was talking to you two gentlemen, were you treated courteously and politely?

A. Yes, we were.

Q. Did I not ask each of you your names and addresses and write them down on a piece of paper?

A. Yes, you did.

Q. And you gave me your name and address as 1096 Main Street, Macon; and Reverend Gillison gave his address as 671 Beckwith Street, Atlanta?

A. That's correct.

Q. After I got your names and addresses, isn't it true I told Reverend Gillison that it was a policy of the motel [fol. 60] not to accept people in general of any race from Atlanta for previous reasons of policy of the motel, and that since he said he was from Atlanta, he would be turned down on that basis?

A. I don't believe that was the exact wording of your statement.

Q. What did you understand I said?

A. My understanding of what you said was that "as far as you are concerned, Reverend Gillison, it's the policy of the motel not to rent rooms to any resident of Atlanta." You didn't mention the word "race."

Q. No resident of Atlanta we would rent rooms to?

A. That's correct.

Q. And I turned him down on the basis of him being a resident?

A. That was your—that was the reason you stated.

Q. Now you were turned down on the basis that you mentioned, that we had a suit pending in Federal Court and we wanted to await the outcome of that suit?

A. That's the reason you gave.

Q. Now Reverend Wells, how long have you lived in Atlanta?

A. How long have I lived where?

Q. In Atlanta.

A. My home is Macon, Georgia. I've lived in Macon, Georgia, for seven years.

Q. I'll ask you another way. How long have you worked [fol. 61] with the United States Post Office Department in Atlanta?

A. I have been in the United States Post Office approximately fourteen months.

Q. While you are working for the Post Office Department, you stay in Atlanta, I presume?

A. Yes. I'm—

Q. You don't commute every day, do you?

A. I'm in transit from Macon to Atlanta. My home is there. My church is there. My family is there.

Q. I ask you again, do you commute every day from Macon to Atlanta?

A. No, I don't commute every day from Macon to Atlanta.

Q. As a matter of fact, the day you came to the motel, you went to work for the Post Office Department about 4:30 that afternoon, didn't you?

A. That's correct.

Q. And you went to work for the Post Office Department at—the next day on Sunday about 4:30, didn't you?

A. That is incorrect. I don't work on Sundays. I'm a minister.

Q. You don't work Sunday?

A. I'm a minister. I don't work Sundays.

Q. If your job requires you to work on Sunday, do you work?

A. My job does not require me to work on Sundays. I'm a minister.

[fol. 62] Q. But you worked Saturday three hours after you came to the motel, didn't you?

A. That's correct.

Mr. Rolleston: That's all.

Judge Tuttle: You may go down. Any other witnesses, Mr. Barrett?

Mr. Barrett: No further witnesses.

Judge Tuttle: You may proceed with your argument, Mr. Rolleston. I understood you to say you had no witnesses.

ARGUMENT ON BEHALF OF PLAINTIFF BY MR. ROLLESTON

Mr. Rolleston: No witnesses.

May it please the Court, of course we filed a brief in this case and I certainly don't intend to go through the whole brief, in accordance with the rules of Court. I would like to state briefly our position without even arguing it as far as their motion is concerned. We have brought this suit in court under the declaratory judgment act, and under that act we believe the provisions are broad enough to include all of the prayers in the petition because the act says that in the case of an actual controversy—and we submit there is a controversy because of nothing else, regardless of the testimony, because of our announced intention—within this jurisdiction except in the case of federal taxes any court of the United States upon the filing of appropriate pleadings may declare the rights and other legal relations of any [fol. 63] interested party seeking such declaration whether or not further relief is or could be sought. And the fact that they have brought in their motion to dismiss the ques-

tion of the amount of damages we sought and limit of ten thousand dollars, should go to the Court of Claims, is one basis of their argument I'm sure, and they say we have no controversy.

Judge Tuttle: Let me—let me—

Mr. Rolleston: Yes, sir.

Judge Tuttle: —clarify one point. Of course, their motion to dismiss does go to the point of your including or undertaking to include a suit against the United States for damages. You don't, I believe, reach that point in your, in your brief that you filed.

Mr. Rolleston: No, sir; I didn't even touch on it.

Judge Tuttle: Well, it may help you to get a little—at least in my thinking on the matter it does appear to me that you cannot join a suit against the United States for damages on any theory with your suit for injunction because it's perfectly clear that even though your theory be right that your property is taken without just compensation, the Tucker Act does limit the District Court's jurisdiction to ten thousand dollars. You might file written briefs on that if you will, because I would hardly think it necessary to have further oral argument on that.

[fol. 64] Mr. Rolleston: Yes, sir. Of course, the other part of the act says that if the court takes jurisdiction and makes a decision in the declaratory judgment suit, they can render such other relief that is necessary. And that is the basis on which we are travelling. Of course, they have raised the point of sovereignty immunity. On that particular issue I'll simply state that if there has been a taking of property without just compensation, we don't have to ask permission of the United States Government to sue them because they are violating the Constitution, if they are.

Judge Tuttle: The Government is giving you that permission by giving you the right to sue in the Court of Claims if it exceeds ten thousand dollars.

Mr. Rolleston: As to the facts, Your Honor, before I get to the legal end of it—

Judge Tuttle: Yes.

Mr. Rolleston: —it is our position, and I'd like to state it very clearly, Number 1, whatever the order of this Court

or any other court is, Federal, State or any other court, this plaintiff corporation will obey.

Number 2, our policy had been to exclude Negroes on the basis of race from this motel before the passage and before the Act became law. Our policy since that time, we announced that, our policy since that time, we have announced that we would not take guests, because we filed [fol. 65] a suit within two hours after the law was signed into law, and on the theory that even though we recognize that any law is valid and, until declared to the contrary, once the matter is in the breast of the court, it was our interpretation that we could stand on whatever the court decided, and there was an early hearing set, and that was what we were standing on.

As far as the testimony of these witnesses, both of them actually live in Atlanta, Georgia. They may maintain their domicile somewhere else, but they are living in Atlanta, Georgia.

Judge Tuttle: Of course, you didn't take the witness stand to testify that you don't accept Atlanta residents in your motel; so this fact issue that you asked them about, one of them denied and the other said yes, as to one man it applied.

Mr. Rolleston: Yes.

Judge Tuttle: Does this become an issue in the case?

Mr. Rolleston: No, sir; but I want to make the point that, and I, it's important to me as a lawyer, that in my opinion the plaintiff corporation hasn't as yet been confronted with a situation where it had to make the choice whether it was obeying the law at this time because these people wouldn't have qualified anyway. We don't take white people from Atlanta except under very unusual [fol. 66] circumstances.

Judge Tuttle: Now isn't it undisputed evidence, and this is all there is so far, that one of the witnesses, that is, the first witness, that he was not asked—stated by you anything about the Atlanta policy. That's his testimony.

Mr. Rolleston: His testimony; yes, sir.

Judge Tuttle: That's undisputed.

Mr. Rolleston: But the other witness said that was made to him. That that statement was made to him.

Judge Tuttle: Yes, he did.

Mr. Rolleston: So you've got two witnesses; at least one heard it.

Judge Tuttle: Not testifying about the same situation, though.

Mr. Rolleston: Well, all—the only point I want to make, Your Honor, is I think we have been complying with the law up until now and just haven't had to be in the embarrassing position to make a decision.

As to the law in the case, and this is the important thing, the constitutionality of the Civil Rights Act of 1964 is, is really the only and the basic issue that this Court really needs to decide.

Judge Tuttle: This is why I'm wondering if you really just don't state that and say that the facts do bring you [fol. 67] within it and therefore the legal question is all we have to decide. You don't go quite that far as I understand it.

Mr. Rolleston: I think—I had hoped our petition brought us within the actual controversy part of the declaratory judgment act and I would like to state that that is our position so there won't be any conflict in the record.

Judge Tuttle: All right.

Mr. Rolleston: Of course, this act was put forth by the executive part of our government, two administrations. It's been debated at least by a number of really good lawyers who represent us in Congress.. It is now the act of Congress; the legislative branch has passed on it; and the real question now is whether or not those two departments of the government have acted wisely and in accordance with the Constitution in passing this law.

Judge Tuttle: We don't deal with whether it's—

Judge Morgan: Whether it's wise?

Judge Tuttle: —wise or not, do we?

Mr. Rolleston: Well, I will go further and say "accurate and just," and a judicial interpretation has got to be put on it by the third party, this judicial branch of the government. No, they—they have the question of determining whether it's wise or not. This Court, I'll submit, has [fol. 68] only one question to determine, and that is whether it's in accordance with the law. But the courts can best

effect justice for all people by carefully preserving and observing our legal processes.

Really, there's only one issue that I'm—would rely on today, although I would like to discuss it briefly—discuss briefly all of the issues, and that is that where a United States Supreme Court decision on a subject has been handed down and still valid and unreversed, no court, State, local or any other, has the right under our Anglo-Saxon jurisprudence and judicial proceedings to reverse that other decision of the United States Supreme except the United States Supreme Court itself. That's really the basis. Of course, there's a lot of things been changed in the law. But when I was in law school, and every freshman law school man now, I think every member of the bar right now, and most every court, knows of that simple principle, that no court can reverse the United States Supreme Court except the Supreme Court itself, if, if it's a decision that is valid and fits the facts of the case before the court.

There's an old principle that we lawyers hear about, or adage anyway, "Beware of a man that comes into court with one case." I'm really here with one case.

Judge Tuttle: What you call a "white horse" case.

Mr. Rolleston: A "white horse" case. Whatever you want to call it. But I'm riding this "white horse," and that's [fol. 69] the civil rights case decided 109 U.S. Page 3 in 1883 involving the Civil Rights Act of 1875. I submit that this Court, regardless of how it will decide the constitutionality of the present law, is bound by that case.

Judge Tuttle: I think I should make it plain, when I said "white horse" case, of course lawyers know what I meant by it. The law students speak of a "white horse" case as a case that fits the facts and the law precisely.

Mr. Rolleston: Yes, sir. Yes, sir. You don't come in on a black horse, as the fellow said, on the front or back of it; you come in on a whole "white horse."

And this Court can't presume either, I submit, that the United States Supreme Court will reverse itself. That's up to them, whatever they want to do about it.

Now our act, if I may read just one paragraph of that previous act, previous Act of 1875 had only two sections and the second section, the penal section was about, if—if

it had been passed today it would really be a subject of controversy because it was a strong penal section. But the first section of the act is almost verbatim, the hundred some-odd years apart, to the act that was passed in the present Congress. And it reads that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of accommodations, advantages, [fol. 70] facilities and privileges of inns, public conveyances on land or water, theatres and other places of public amusement subject only to the conditions and limitations established by law and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." And that's my one "white horse" case, because they have decided the same issue exactly which is presented by the Civil Rights Act of 1964.

Judge Tuttle: Now, of course, if you read that opinion carefully as I know you have, you'll find this language or something like this in it, "Neither party contends that this Act may be sustained by anything other than the Fourteenth Amendment to the Constitution," which of course means the court there stated that no one then contended that it could be sustained by the commerce clause. Now what has the Supreme Court of the United States done with the commerce clause since that time?

Mr. Rolleston: They have distorted it, may it please the Court.

Judge Tuttle: So that without doing violence to that decision, the court has now made it really inapplicable for anyone to argue that this Act, which is ostensibly placed, based on the commerce clause cannot be supported by the commerce clause rather than the Fourteenth Amendment.

Mr. Rolleston: Well, I have read the whole case, of [fol. 71] course, and I've cited a good portion of the decision in my brief,—

Judge Tuttle: You don't—

Mr. Rolleston: —but I—

Judge Tuttle: You don't recall that language?

Mr. Rolleston: Oh, yes; I recall the language referring to the commerce clause. As a matter of fact, the court in that part of the decision said, "We're not saying that it could not be decided on the commerce clause," but the deci-

sion held, the first part of it asked the question, "Has Congress constitutional power to make such a law?" And they made this statement, "Of course"—using the words "of course"—of course, this is a long time ago—"no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments"—meaning the Thirteenth, Fourteenth and Fifteenth Amendments. The commerce clause was in the Constitution and the Fifth Amendment was in the Constitution at that time.

Judge Tuttle: So the Court there did not pass on whether it could be sustained under the commerce clause. It said no one has contended it was supported under the commerce clause.

Mr. Rolleston: But here's the interesting part of the language which is the basis for what is said in the decision. "Such legislation cannot properly cover the whole domain [fol. 72] of rights appertaining to life, liberty and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the State legislatures and to supersede them." And we say that this really is the basis of this, of this Act. But the Court is not responsible for the consequences of its judgment, as to what happens to what you decide. It's only responsible it seems to me to uphold our judicial processes.

Now the commerce clause which is now the basis of the present act is the interesting thing, because this is an innocuous and simple little clause and all it said was, in the third clause, it says, "Congress shall have the power to regulate commerce with foreign nations among the several states and with the Indian tribes." That's all it said, and on that one little sentence we are about to change the government of the United States. We have a Fifth Amendment in the Constitution which guarantees that no person shall be deprived of life, liberty or property without due process. We have a Thirteenth Amendment in the Constitution that says there will be no slavery or involuntary servitude. We have a Fourteenth Amendment in the Constitution that says no state shall pass a law abridging the

equal rights of people of any color for any reason. And [fol. 73] yet, the Congress didn't rely on any of these amendments to the Constitution in passing this bill. It specifically relies on interstate commerce.

Judge Morgan: Don't you think a motel such as yours is in interstate commerce, Mr. Rolleston?

Mr. Rolleston: No, sir, I don't; and I'll proceed to say why. As a matter of fact, this bill—

Judge Morgan: Under the decisions of the Supreme Court?

Mr. Rolleston: Well, I've got three decisions in here that say to the contrary. This bill really, instead of being called the Civil Rights Act of 1964 should really have been called, named—and it's the biggest misnomer in history—The Extension of the Interstate Commerce Clause to eradicate State Legislatures. What commerce is now and what it was way back yonder are entirely different. But there are three cases cited in our brief. One involves taxicabs. One involves the Howard Johnson Restaurant. And one involves a bowling alley.

In the taxicab case, the facts were that people from out of the state—whether they were domiciled in Massachusetts and lived in Atlanta or not—people from out of the state came to the railroad station in Chicago, got off the train, got in a taxicab and either went to a hotel, office building or home. And the other part of the facts were the [fol. 74] very reverse, they started at their homes and office buildings and hotels, and went to the railroad station. And under the Anti-Trust Act which they were tried under, they held that the taxicab transporting that man to the railroad station or going vice versa, the taxicab company was not in interstate commerce. In the Howard—this was some time ago—but in the Howard Johnson Case, which was decided in the Fourth Circuit Court of Appeals, it's not the United States Supreme Court—and my theory, may it please the Court, as far as the controlling case on this issue in my first legal theory, of course, doesn't apply to interstate commerce or these other parts of my argument. But in the Howard Johnson case in 1959, they brought, a Negro attorney for the Internal Office—Internal Revenue Office brought a suit against Howard Johnson and said, "You

serve—you sit here on an interstate highway; you serve guests who are travelling in interstate commerce; and therefore you are in interstate commerce." And they held that the Howard Johnson Restaurant was not in interstate commerce.

Judge Tuttle: Of course, there's no congressional act there being construed by the court.

Mr. Rolleston: No, sir; but Judge asked me did I think we were in interstate commerce. We've got other decisions on similar facts—

Judge Morgan: What I based it on, isn't there a number [fol. 75] of NLRB cases that have gone to the courts holding that hotels or motels except those residential motels were under the, subject to the NLRB wage and hour—

Mr. Rolleston: I don't remember whether they have gone to the Supreme Court or not, Judge Morgan. Of course, you can find a case on any subject.

Judge Morgan: One went from the circuit court of appeals I believe to the Supreme Court, and certiorari, it was sent back to the court of appeals,—

Mr. Rolleston: Yes, sir.

Judge Morgan: —and since that time it's been accepted, hadn't it?

Mr. Rolleston: I'm sure you can find cases in the circuit court and in the Supreme Court to the contrary of these cases. There's no question about it. But here are these cases, too.

Judge Morgan: All right. You go ahead. I didn't mean—

Mr. Rolleston: Then there's a case decided in 1963 in the State of New York by the Supreme Court of New York regarding a bowling alley. And in that case the bowling alley drew trade from interstate commerce; they advertised in interstate commerce, which they stipulated in the facts as we have; and they received equipment in interstate commerce. And they held that just because interstate travellers went to that bowling alley, the bowling alley was not [fol. 76] in interstate commerce. And the Howard Johnson Restaurant was not in interstate commerce. And the hotels that the people went to by taxicabs was not, could not be in my opinion in interstate commerce, if the man in the taxicab had ceased to be in interstate commerce when he got

in the taxicabs. That's the substance of it. But the trouble about this thing, and the reason I'm talking about interstate commerce so much is that what is the final conclusion if you are adopting the theory that Congress has now put on the word "commerce among the states?"

I will give you my example again. Suppose a man comes to Atlanta by airplane. That's the usual means of transportation now. He catches a cab into Atlanta; goes to the First National Bank and arranges for a construction loan. He goes to a local real estate company and signs a contract to buy a piece of land to build a building for his company on. The right usual thing happening today. He goes to a local contractor that doesn't ever step out of Fulton County hardly and makes a contract to build the building. He goes to the Commerce Club down the street and eats lunch. He is entertained at the Driving Club. At night he goes to the Wits End, and finally he gets to the Heart of Atlanta Motel. Do you mean to tell me that every one of those local businesses, except the First National Bank of Atlanta, every one of those local businesses has now become in inter- [fol. 77] state commerce because of the stretching of the word "commerce among the states?" I call it interstate commerce by infection, because it's just like a malaria mosquito jumping from one man to the next one; every victim is infected. And the logical conclusion—

Judge Tuttle: I think the malaria mosquito has one bite and then he dies.

Mr. Rolleston: I wish this man had just one bite. He would have bitten somebody long before he got to me. But in this case, if you drag that out to its conclusion, that because he is a man in interstate commerce, a traveller, if you can say the restaurant is in interstate commerce and the bowling alley and the taxicab and our motel, you can take every corner drugstore and put him in interstate commerce. You can take every lawyer who buys a pencil to run his business with, and he can't run his business without one; you can take every doctor who buys an instrument from Connecticut. You can take anybody who buys anything from another part of the country. That's what they are trying to do with "interstate commerce." And they'll put them all in interstate commerce. And the legislature might as

well go home and forget about reapportionment and don't ever come back because whatever they pass would be of no value and no good, if Congress has appropriated that field of legislation. As long as they don't, they haven't. But why [fol. 78] would you expect Congress not to? Has any government in our history ever had power to exert over legal situations and abandoned that power and given it up? If they ever got it, they keep on taking more.

Judge Tuttle: Since you asked that question, let me answer it for you. Congress in the Fair Labor Standards Act expressly saved out of the operation of the Fair Labor Standards Act retail establishments, local retail establishments, which is of course complete congressional restraint. The large retail establishments undoubtedly under decisions of the Supreme Court could be held by Congress to be within the stream of interstate commerce. But they have kept out of that by exempting local retail establishments.

Mr. Rolleston: Well, there's another case of it, Your Honor. Congress has kindly kept the hotel and restaurant industry out of the wage and hour law too, so far. But every time Congress meets—

Judge Tuttle: Not Congress, but the Labor Board.

Mr. Rolleston: Well, I was going to say every time Congress gets—every time Congress meets, Your Honor, they have a law, and have one pending right now, to put these other industries under wage and hour. And the only reason we are not there now, frankly, is that they bring in a great big act that covers everybody, and whoever puts up the biggest opposition they drop them out one time, and pass [fol. 79] the law. And next year, they've only got those two to work on and they get one of them; and then the next year, they get the last one, and finally they've got all of them, in interstate commerce, and under the wage and hour law, and under the Sherman Anti-Trust Law, and under NLRB; and then they've got everything that used to be private rights. This is really the gravamen of the case. This is the guts of it. This is really the reason we brought the lawsuit. We could get along with Negro guests. They would hurt our business as we've alleged, and it's true. We could get along with them. But the next step after this act, there may just be one more step, that's taking over all legis-

lation by Congress, so setting up the stage for a dictatorship in this country. I'm telling you, this extension of the commerce act to every man, woman and child in this room and in the United States, business and personal affairs, is not authorized by the Constitution.

The Fifth Amendment we've claimed is violated also. The Fifth Amendment says you can't take a man's liberty or property without due process; and you can't take it, his property without just compensation. Have they taken our liberty at the Heart of Atlanta Motel? We used to could say who could come there and who could not come there and we would turn them away for whatever reason we wanted. We don't have that liberty under the prohibitions of this [fol. 80] act if the act is good. We say that the taking of our liberty has been done by an act of Congress. It's the same liberty any other local individual has to run his business.

Judge Tuttle: Does the innkeeper traditionally have that same privilege?

Mr. Rolleston: Under, Your Honor, under the common law, the innkeeper did not have it, that privilege. But where the common law has been changed by statute—

Judge Tuttle: He had to take them all, did he not?

Mr. Rolleston: That's right. Under the common law he had to take everyone. But where the common law, as the Court know, prevails unless changed by statute. In Georgia the statute has changed the common law. In the 52nd—Chapter 52-101 defines what an inn is, and they say, "An inn includes all taverns, hotels" and so forth, and then the next chapter, it says, "Persons entertaining only a few individuals are not"—"Persons entertaining only a few individuals, or simply for the accommodation of travellers"—and the stipulation of facts in this case are that we take transient guests—"are not innkeepers, but depositaries for hire, bound to ordinary diligence." And then in another code section, Chapter 52-3 under "Tourist Courts" they define, it says, "This Chapter shall not apply to hotels and inns within the definition of" the previous chapter, and that [fol. 81] "Every person, firm or corporation engaged in the business of operating outside the corporate limits of any city or town in this State a tourist court, cabin, tourist

home, roadhouse, public dancehall or other similar establishment by whatever name called, where travellers and transient guests are entertained are not innkeepers." And they have another chapter, which says that a—52-401, which says that a tourist court shall include among other things motor hotels. And then they have a penal section in this chapter which says that motor hotels, for failing to do so and so about health are subject to penal things. All through this whole chapter motels and motor hotels are treated differently; they have to get a different license; there are different penal sections; and they are taken out of the definition of the innkeeper because the very act says so.

As to the Fifth Amendment, not only has our liberty been taken we claim, but part of our property rights. Any proprietary interest in the ownership of private property if interfered with where the owner can thereafter not exercise their right, if it is the result of a taking by a government, it is a taking of property under the law. The Fifth Amendment says property cannot be taken without due process. Certainly this Circuit Court, Fifth Circuit Court of Appeals has defined the due process just recently in the Hornsby Case this year and set up, as the Court is very [fol. 82] familiar with, that there must be a responsible hearing, based on evidence taken at a hearing where notice is given, witnesses there and witnesses to be cross examined, and only based on the evidence adduced at the trial. Has there been a hearing on the taking of our property, if there has been a taking?

Judge Tuttle: Well, you are talking about procedural due process and of course the passage by Congress of a constitutional law is due process. You are speaking of procedural due process in an administrative procedure, which is quite a different thing. You would not—

Mr. Rolleston: Your Honor,—

Judge Tuttle: You would not argue against the proposition that a statute which is constitutional complies with due process, substantive due process.

Mr. Rolleston: That is true. But I would say that a statute could be unconstitutional because it violates the

Fifth Amendment by taking private property without procedural due process. There's no procedural due process set up in the statute, and therefore it's void.

The other part of the statute says that property shall not be taken without just compensation. Of course, there's no compensation set up in the statute for the taking, if there is a taking. And I cite recent cases to the Court in the decisions, one of them from the—they are not Supreme Court cases, but in 1961 the Supreme Court of the State [fol. 83] of Washington, way out on the West Coast, held "this constitutional right of the individual not to be dominated as a private affair is predicated upon the theory that the greatest good for the greatest number can be best achieved by permitting the individual to choose his own course of action, conforming of course to the reciprocal rights of others." And in the other case, decided in 1959 in Washington, in the Cinderella Case, no truer words were ever spoken than these in that case when it says, "In dealings between men, both cannot be free unless each acts voluntarily; otherwise, one is subjugated to the will of the other.

As to the Thirteenth Amendment which we have attacked by amendment, the Thirteenth Amendment provided there be no slavery and no involuntary servitude. In our case, how can we say that we are subject to involuntary servitude? We say that we had the right to run the motel like we wanted to before the act was passed. We now have the right to run the motel like the Government says. Sure, we have the alternative of quitting and giving up a four million dollar business; but can that be required of a business by law? In the Hodges versus United States in 1906, some time ago, they held concerning the Thirteenth Amendment that slavery and involuntary servitude is denounced by the Thirteenth Amendment, meaning a condition of enforcement of compulsory service one to another. And while [fol. 84] the cause in citing that amendment was the emancipation of the colored race, it reaches every individual and every race.

In this Fifth Circuit Court of Appeals in 1944 in the Heflin Case, they say, Well, if you got paid for it, that's all right; that takes it out of the Thirteenth Amendment.

The case held whether the parent was paid little or nothing is not the question. It is not uncompensated service but involuntary servitude which is prohibited by the Thirteenth Amendment. Compensation for service may cause consent, but unless it does, unless it does, it is no justification for forced labor.

And the United States Supreme Court has held it requires no argument to show that the right to work for a living is, in the common occupation of the community, is the very essence of the personal freedom and opportunity that it was the purpose of the Fourteenth Amendment to secure.

May it please the Court, our legal position is that there has been a case decided which is controlling on facts that are in this case and on a law which is almost exactly the same, and that the Court is bound in following our legal procedures to follow it and throw this case to the United States Supreme Court to do what they may. But at this stage of the game, it ought to go up there. And we claim, of course, that it violates the Fifth Amendment by the taking [fol. 85] of property and liberty without due process of law and without compensation; violates the Thirteenth Amendment involving involuntary servitude.

I would like to say one other thing, may it please the Court. The name of Kennedy will be, go down in history of all times regarding civil rights.

Judge Tuttle: Mr. Rolleston,—

Mr. Rolleston: John F. Kennedy—

Judge Tuttle: —is this proper argument?

Mr. Rolleston: Yes, sir; I think so. Just—

Judge Tuttle: We are not disposed to cut you off, but actually, what—what's proper about it?

Mr. Rolleston: Well, sometimes in the affairs of men it takes more than one individual to express a thing, and I want to quote a man. Mr. Robert Kennedy, the defendant in this case, wrote in the prefaced word to the Memorial Edition of the PROFILES IN COURAGE that the one thing that President Kennedy admired was courage. It took courage to pass this law. It took a little courage maybe to file a suit against the Federal Government. And I know this Court will follow the motto over the Supreme Court of Georgia's bench which says in Latin, when translated, "Let

justice be done though the heavens may fall." And I know this Court, if it agrees with our legal interpretation will do that in spite of the consequences which could arise out of [fol. 86] such a decision. And I thank you.

ARGUMENT ON BEHALF OF DEFENDANT BY MR. MARSHALL

Judge Tuttle: Mr. Marshall.

Mr. Marshall: May it please the Court, the United States has prepared a memorandum on the constitutional—

Judge Tuttle: I think you might almost call it a brief without exaggerating.

Mr. Marshall: Memorandum of points and cases. I've given a copy to Mr. Rolleston. We captioned the brief in the case involving Pickrick Restaurant as well as in this case for the sake of convenience.

Clerk: Have you got an extra copy, sir?

Mr. Marshall: Yes, sir. I think I can be relatively brief about this, may it please the Court.

The first point made by Mr. Rolleston turns on the civil rights cases which involve the constitutionality of a bill passed in 1875. As you mentioned, Judge Tuttle, it shows on the face of those cases that they were not deciding any question about the power of Congress to pass a law under the commerce clause. In addition to the language which you referred to, I would like to call the Court's attention to the later case of Butts against Merchant and Miners Transportation Company, which is 230 U.S. 126. It involved a private suit for damages under the 1875 Act, and it was based—argued that, that the act was unconstitutional under the commerce clause. The Supreme Court said in that case [fol. 87] that the civil rights act had not been passed under the commerce clause. The question of the constitutional validity of those sections was passed on only under the Fourteenth Amendment, and that it was held, they say, that the act received no support from the power of Congress to regulate interstate commerce because as is shown by the preamble and by their terms, they were not enacted in the exertion of that power. That case is cited in the brief. There are a number of leading—

Judge Tuttle: Do you deduce from that, the statement by the Supreme Court that an act may or may not be found

valid by it according to the theory or basis on which Congress sees fit to enact it?

Mr. Marshall: Well, Your Honor, I think under the commerce clause, Congress has to be regulating interstate commerce.

Judge Tuttle: Because that's the power that the Constitution gives to Congress, to regulate commerce.

Mr. Marshall. To regulate; that's right.

Judge Tuttle: Unless the Congress is actually seeking to regulate commerce, then it can't be said that the act would fit under that commerce clause.

Mr. Marshall: That's right. I think that's what the court meant, that Congress wasn't seeking to do that; therefore, the act couldn't be sustained under whatever power Congress had in attempting to do that. The 1875 acts were [fol. 88] based solely on the Fourteenth Amendment and to some extent on the Thirteenth and Fifteenth Amendments.

Judge Morgan: This civil rights act for this year is based on the commerce clause.

Mr. Marshall: There are provisions of it, Judge Morgan, which are not involved in this case, that are based on the Fourteenth Amendment.

Judge Morgan: Well, I was actually referring to these provisions,—

Judge Tuttle: Title II.

Judge Morgan: —public accommodations.

Mr. Marshall: No, not Title II. There are parts—

Judge Tuttle: Or both.

Mr. Marshall: —that are based on the Fourteenth Amendment. If you look at 201-B of the Act, you'll see that it says each of the following establishments which serves the public, if its operations affect commerce or if the discrimination or segregation by it is supported by State action, that was an exercise of power under the Fourteenth Amendment in terms of the sit-in cases where the Supreme Court has held that if the State requires segregation by private establishments,—

Judge Tuttle: I don't mean—I don't understand you to say that any part of it is not, is not based on the commerce

clause, but it is also in certain respects sought to be based [fol. 89] on the Fourteenth Amendment. Is that what—

Mr. Marshall: That's right, Judge Tuttle. But that's a very limited application. It's an application which is really designed to eliminate state compulsory segregation. The cases which I would refer the Court to that held generally on the power of the Congress under the commerce clause are four. There are others that are cited in our brief, but I think that four cases, starting in 1936, really set the bounds of the power of Congress to regulate commerce. One is the Jones and Laughlin Steel Corporation Case, 301 U.S. 1, decided in 1936 upholding the Wagner Act which in many ways had similarities to this piece of legislation in the sense that it was intended to deal with a national problem that had been marked by a good deal of emotion and controversy and even violence in the streets. The court said in that case that to regulate, in the course of regulation of commerce the Congress was not limited just to the regulation of institutions which are in the stream of commerce or which themselves move in commerce, like railroads and buses, and that kind of thing, but that it can regulate and pass legislation to eliminate burdens and obstructions due to injurious actions springing from other sources. That the Wagner Act of course regulated the relationships between employers and their employees within the plants where the plants, the operations of the plants affected com- [fol. 90] merce. And that, as you noted, Judge Morgan, has been recently in many cases applied to hotels, retail stores and other establishments that are local in the same sense that the Heart of Atlanta Motel is local.

Judge Tuttle: The Jones-Laughlin Case was the first decision by the Supreme Court that went so far as to hold that what had theretofore been considered purely local, like manufacturing, mining and farming and the like, might still be under congressional regulation. Is that—

Mr. Marshall: Well, Judge Tuttle, you say the first case. I think that the history of the commerce clause goes back to Gibbons against Ogden. I think that the decision in Jones and Laughlin and the following ones after that were in the keeping of the spirit and the view of congressional power which goes back to Justice Marshall's opinion in Gibbons against Ogden. There was a case in 1922 involving the

Packers and Stockyards Act which related to regulation of the stockyards in Chicago, and of course, that was local in a sense that it all happened in Chicago. The hogs came in and meat went out. But what was regulated was local activity.

There are three cases which held also that Congress also has the power to regulate intrastate activity if that is necessary to complete regulation of interstate commerce. Those are United States against Rock Royal Corporation, 307 U.S. 533. The United States against Darby, 312 U.S. 100, [fol. 91] involving the Fair Labor Standards Act. And Wickard against Filburn, involving the Agricultural Adjustment Act. The last case, if you will recall, involved the regulation of a farmer who grew wheat on his own farm for consumption on his own farm, and the Supreme Court held that Congress had the power to reach that operation because of its involvement with the problem of wheat surpluses generally.

Judge Morgan: Wasn't it the old Schecter Case, wasn't that the Schecter Case and the court has been more or less distinguishing or, as you say, whittling at the doctrine laid down in 1935 or '36 in the Schecter Case since that time?

Mr. Marshall: I would say, Judge Morgan,—

Judge Tuttle: The Wickard Case—

Mr. Marshall: Wickard against Filburn. Also the Jones and Laughlin Case narrowed the Schecter Case very much; and there was a milk case I think involving Wrightwood Dairy, which referred to the Schecter Case and said something to the effect that its continuing validity was in doubt.

Judge Tuttle: The Schecter Case—

Mr. Marshall: I would say the Schecter Case is effectively overruled.

Judge Tuttle: I went—

Mr. Marshall: And I think also—

[fol. 92] Judge Tuttle: It went largely as I recall it on the Supreme Court's decision that Congress was illegally giving legislative power to, to an administrative board.

Mr. Marshall: That's right, Judge Tuttle. It held that the—

Judge Tuttle: But in Butler—

Mr. Marshall: That the NIRA was an unlawful delegation of legislative power, which is also a doctrine which has been abandoned.

Judge Tuttle: I think every student recognizes that about 1936 in January after the Butler Case where they knocked out the Agricultural Adjustment Act, there was really a complete turn-around from that point on, the erosion if you would like to speak of it that way, was very effectively commenced. And this Jones-Laughlin Case was the first important decision after the United States lost the Butler Case.

Mr. Marshall: That's right, Judge Tuttle. I believe with the exception of the Jones and Laughlin Case, the other cases that I referred to as basic decisions, the Darby Case, the Rock Royal Case and Wickard and—Wickard against Filburn were unanimous. And of course in recent years since then there have been a number of decisions under the National Labor Relations Act and the Labor-Management Relations Act which have been unanimous; and—and mostly per curiam, upholding exertions of [fol. 93] jurisdiction by the National Labor Relations Board over what are effectively local businesses because what happens to these local businesses affects the interstate commerce.

Judge Morgan: The case I was referring to was the—I believe it was the Floridian Case. I don't know whether that went to the Supreme Court, but it was in regard to the Fair Labor Standards Act, and then went up, is my recollection.

Mr. Marshall: Is that case cited in your opinion?

Judge Morgan: I don't believe it's cited in any of the briefs. I read it recently.

Mr. Marshall: These cases hold that Congress has the power to regulate commerce not only in the sense that they can regulate things that move in interstate commerce generally, but that they can pass legislation that deals with problems that affect interstate commerce. Our brief sets forth four—and there may be more—but it sets forth four ways in which the problem dealt with in Title II could reasonably be considered by Congress to have affected interstate commerce so that it required congres-

sional action. And of course, as you noted, Judge Tuttle, it is not for this Court to decide whether Congress was wise in making that decision. It's a question of whether it had the power to make that decision.

Judge Hooper: Mr. Marshall, to what extent do the courts have the right to say when Congress has said a [fol. 94] certain act does affect commerce, what right do the courts have or do not have to say whether that factual assumption is correct? Now in the Jones and Laughlin Case, the court said this, among other things: Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them in view of our complex society would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.

Now what I'm interested in is whether under the Civil Rights Act, Congress says that a certain thing does affect commerce, is that conclusive on the court or is it, is it not?

Mr. Marshall: Judge Hooper, I do not think that any constitutional opinion of Congress is conclusive on the court. It's the responsibility of the courts to repass on the constitutionality of statutes the Congress thinks are constitutional. But I think that the findings of Congress in a matter like this are entitled to very very great weight, and that at least—

Judge Tuttle: Substantial fact findings.

Mr. Marshall: That's right, Judge Tuttle. It is fact findings, and they are based on the record and hearings. The matter was under consideration by Congress for over [fol. 95] a year. It was debated at great length. It is an issue and a problem that involves great emotions. There are great political problems with it. And all of that went into the determination by the Congress to deal with it, Judge Hooper. The decision of Congress on that was made by men that included very conservative men as well as very liberal men. And I think that that kind of a decision is entitled to great weight and has been given great weight by the Supreme Court except for a very brief period really extending maybe ten years from around 1925 to 1935.

Judge Hooper: Well, you see, in the instant case it's stipulated that the Heart of Atlanta, 75% of its business is transient, which is right substantial. But suppose you later have a case where it's almost negligible, the number of people who are in commerce who go there is almost negligible. In that type of case—I was just thinking about the precedent of this case—in that kind of a case, where would the courts draw a line between what is substantial and what is not substantial?

Mr. Marshall: Judge Hooper, the—in dealing with a hotel, which this case does, the Act does not require the court to draw that. Congress has made that determination. It defines the hotels covered by that Act in Section 201-B-1 and 201-C Subsection 1. And it includes all inns, hotels, motels or other establishments which provide lodgings to [fol. 96] transient guests. All of them. It is not a question substantially under the Act. Now the question is, can Congress do that? Can Congress make that factual determination that in order to deal with the problem they have to regulate all hotels,—

Judge Hooper: Sir, do not all hotels furnish lodgings to transient guests?

Mr. Marshall: I would think so, Judge Hooper, or virtually all of them.

Judge Tuttle: Do you have ready reference to any Supreme Court Case that I think states this proposition, something along these lines, that when a determination is made by Congress on—of this nature, the courts are required to support it if there's any reasonable relation to the determination by Congress to the problem that it seeks to legislate on?

Mr. Marshall: I think that's right, Judge Tuttle. I think that—

Judge Tuttle: I think that's the principle. I don't have the case.

Mr. Marshall: I think the principle goes gack to Gibbons against Ogden. I think—

Judge Tuttle: So that what—

Mr. Marshall: I think that language can be found in Gibbons against Ogden.

Judge Tuttle: So that what we are required to do is [fol. 97] to determine whether there was any reasonable basis for Congress to ascertain that the hotel industry reasonably affects interstate commerce.

Mr. Marshall: Yes. And this problem I think, Judge Tuttle, not only the hotel industry, but this problem within the hotel industry of racial discrimination,—

Judge Tuttle: Yes.

Mr. Marshall: —could Congress reasonably have made that determination. I think that's the question.

Judge Tuttle: That this would be and have an adverse effect on interstate commerce.

Mr. Marshall: That's right. In the Darby Case, Judge Hooper—no, I'm sorry. It's in Wickard against Filburn, where there is no question but that the activities of the farmer who was regulated, that particular farmer, were intrastate. He grew wheat on his own farm for consumption on his own farm. He grew more wheat than the quota that was allowed him under the Agricultural Adjustment Act. The question was whether Congress had the power to regulate that farmer, that particular farmer and the court held unanimously that he did—that Congress did. And among other things, it said, the court pointed out, citing Gibbons against Ogden, that effective restraints on the exercise of this power must proceed from political rather than from judicial process. I think our system works that way. If Congress is arbitrary and unreasonable [fol. 98] and the court can make that determination that there is an arbitrary or unreasonable relationship between what Congress was trying to do and some, some commercial problem affecting interstate commerce, then I think it would be the court's duty to strike down the act. But unless it can make that determination, I think it's up to Congress to—

Judge Hooper: You are saying that it is not necessary under this statute as to hotels to show that they take any transients moving in commerce, in interstate commerce.

Mr. Marshall: It has to be shown they take transients, Judge Hooper.

Judge Hooper: Transients.

Mr. Marshall: But it does not have to be shown that the transients in a particular case moved in interstate commerce.

Judge Hooper: Oh, no. We are not talking about the same thing. I realize that, but—

Mr. Marshall: But transients, Judge Hooper,—

Judge Tuttle: Because the definition in this act—

Mr. Marshall: In this act.

Judge Tuttle: —is interstate commerce.

Mr. Marshall: In this act.

Judge Hooper: Any number, any amount of transients.

Mr. Marshall: Yes, that's right.

[fol. 99] Judge Hooper: Transients, that means people who are moving in interstate commerce.

Mr. Marshall: No, Judge Hooper. Not necessarily. It means people that are moving, it means that the hotel is, the hotel caters to transients. That is, it isn't a residential hotel. The people that stay there don't live there as residents. It takes in people that usually come from some other place, but the some other place does not under the Act, Judge Hooper, have to be shown to have been another state.

Now as I said, these cases, the Darby Case, the Rock Royal Case, and Wickard against Filburn expressly hold that Congress has the power to reach some activities that are completely intrastate if they have to do that in order to control a problem, deal with a problem that they properly can deal with under the commerce clause. And those holdings of those cases in turn go back to the Shreveport Rate Cases in 1914 where the question of the validity of an order of the Interstate Commerce Commission over purely intrastate rates in Texas was involved. And that was upheld by the Supreme Court in the Rate Cases in 1914. And these cases carry that on, Judge Hooper.

Our brief sets forth and suggests four ways in which Congress could reasonably have made a determination that this was a commercial problem that they should deal with under their power to regulate interstate commerce. One is [fol. 100] simply the burden on Negro travellers. This is a problem that Congress has dealt with before, dealt with it in the Interstate Commerce Act and dealt with it in the Federal Aviation Act. And those have been upheld unani-

mously. This Court upheld the, the validity of Interstate Commerce Commission rules that were to deal just with that problem in restaurants in bus stations. The problem of the discrimination against Negro travellers moving through the country. So that is one thing by itself that I think Congress had the legitimate, reasonable power to deal with and to determine that in order to deal with that they had to deal with all hotels.

Judge Tuttle: Let's say then, do you take the position then on that point that if it is, if we find that Congress could have determined that the mere interference with the travel of Negroes by reason of these restrictions, it would be sufficient to sustain the Act on that ground?

Mr. Marshall: I think so, Judge Tuttle.

Judge Tuttle: And that is because the courts have held, including this court, or three-judge court I guess, it's a local—

Judge Morgan: Same court.

Judge Tuttle: It's a local district court,—

Mr. Marshall: I think it was this court.

Judge Morgan: Same court.

Mr. Marshall: I think it's the same court.

[fol. 101] Judge Tuttle: That the, that the interstate commerce rule prohibiting discrimination between white and Negro passengers in a bus station, and including the restaurant, would in no—would be justified—

Mr. Marshall: That's right.

Judge Tuttle: —because that would be a burden on interstate commerce.

Mr. Marshall: Judge Tuttle, you will recall those rules weren't limited to interstate travellers.

Judge Tuttle: That's right.

Mr. Marshall: In fact, the court had that, the Fifth Circuit had that up in Baldwin against Morgan involving the Birmingham—

Judge Tuttle: Involving the Birmingham railroad station.

Mr. Marshall: It applied to anyone that comes into the bus station, and it was reasonable for Congress to feel that that was the way they had to deal with bus stations

in order to deal with the problem of discrimination against Negro travellers.

Judge Morgan: Of course, in that—in those cases we dealt with the franchise—I mean the bus companies and so forth had a franchise. I know the principle was intrastate affected interstate. I think that's the way the State of Georgia brought the petition, as I recall.

Mr. Marshall: That's right, Judge Morgan. I mean this [fol. 102] is different, but this goes further; but the type of regulation by Congress going back to 1887 is exactly the same. It was the prohibiting of discrimination in local restaurants because the local restaurants were connected with an interstate bus system and therefore served at least some interstate travellers.

Judge Morgan: That's right.

Mr. Marshall: Another reason that Congress couldn't —could choose to deal with this under its interstate power, interstate commerce power is to move artificial, remove artificial restrictions on markets. And it has regulated essentially local businesses for that reason before. One that occurred to me is in the, under the antitrust laws. There have been a number of cases involving movie theatres and the question of movie threatres allocating runs between themselves and fixing admission prices on tickets. Now that's a, an artificial restriction on who can see a movie when in the local theatre. The movie goes—moves through interstate commerce. So that these restrictions in hotels and in this case in restaurants, and in theatres, is something which restricts the market for goods that move in interstate commerce. The food that goes into a restaurant, if the market is limited to white, that restricts the market artificially. Same thing with a film that moves in interstate commerce. If it is shown in the theatres and Negroes are [fol. 103] not permitted in the theatre, that is an artificial restriction on the market for that commodity that moved in interstate commerce. As I say, under the anti-trust laws, under the Federal Trade Commission Act, Congress has dealt, regulated with this sort of artificial restriction on markets. In this case, in terms of race, but it's the power of Congress to deal with it.

Another one which I think is analogous as I said before to the Wagner Act is to deal with the causes of disputes that affect interstate commerce. The hearings before the Commerce Committee of the Senate included a great deal of material on the economic effect of disputes over discrimination in places of public accommodations. The City of Birmingham, even here in Atlanta, in many many cities while Congress was considering this, there were economic effects on the business generally in those cities developing from the disputes over this. And Congress chose to deal with that through law, through regulation in the same way that it chose to deal with labor disputes under the Wagner Act in the Thirties.

And finally, and it's sort of a corollary point, I think that these disputes and the discrimination generally could reasonably be decided by Congress to have affected arbitrarily in some adverse system against Southern States particularly, the allocation of resources within the country, the decision of where to put industrial plants, the decision [fol. 104] of where to locate hotels, that kind of decision which affects the commerce of the United States very deeply and particularly in some of the states in the United States; it's also a problem I think Congress felt it had to deal with and reasonably felt that it should deal with.

There are a couple of specific cases I wanted to call the Court's attention to by the Supreme Court on this question of regulating local business. One is the Sullivan Case, 332 U.S. 689. That held a drugstore violated the Food, Drug and Cosmetics Act by taking pills out of one box and putting them into other boxes, inside the store, and then selling these other boxes without the labels, properly. That was a very local operation. He bought the pills, and they stopped in the store, and they were reboxed in the store and then they were sold, all in the store. And that—

Judge Tuttle: The Food and Drug Act is entirely dependent upon the commerce clause, isn't it?

Mr. Marshall: Yes, it is, Judge Tuttle. I think in one of these cases, I believe it's in the Darby Case, that—that the courts, court said that Congress may exercise the commerce power to prevent injuries to the public health, morals or welfare. That the fact that they are doing something else,

that they are advancing the cause of justice or meeting a [fol. 105] problem of health, morality or public welfare by regulating commerce doesn't make the regulation invalid.

Judge Hooper: Well, has the Supreme Court said on several occasions that the general welfare clause is a matter of state law and not the federal law; that the welfare clause has to be construed in the light of the specific powers which are given to Congress?

Mr. Marshall: Well, Judge Hooper, I did not intend to put any emphasis on the separate power of Congress under the general welfare clause. I said that in regulating commerce, in regulating commerce and in their exercise of that power, their purpose—this is what they said in Darby—could include such purposes as to promote public health, promote—

Judge Hooper: Oh, surely.

Mr. Marshall: —public morals or promote public welfare.

Judge Hooper: Right.

Mr. Marshall: And the fact is that a great deal of legislation passed under the commerce clause does that. The Food and Drug Act, that's mainly a health measure. I mean it's done by regulation of commerce, but it is dealing with the problem of health. The Meat Inspection Act; the Poultry Products Inspection Act; the Plant Quarantine Act; Packers and Stockyards Act as I mentioned before which was held up—upheld in 1922; Fair Labor Standards [fol. 106] Act; the whole Wagner Act; and of course, the Mann Act and other things that are more direct, on that sort.

The—I think that these cases, the other two cases I particularly wanted to call the Court's attention to on this question of local businesses was the Chevrolet Dealer Case, which is an NLRB case, which is cited in our brief, regulation of a Chevrolet dealer who bought his cars from a plant inside the same state; and the Reliance Fuel Oil Corporation Case, which is a recent case, unanimous case by the Supreme Court in 371 U.S. 224. Shubert Case under the anti-trust laws which regulates legitimate theatres through anti-trust laws, but it's local cases. There are others, but—and there are others cited in our brief in-

cluding a number of cases that deal with regulation of hotels and this kind of establishments, hotels and restaurants.

That brings me to the question of whether there's some limitation in the Fifth Amendment or the Thirteenth Amendment on this power of Congress under the commerce clause, I think it's really the same question, that if Congress has the power under the commerce clause to regulate and the regulation doesn't involve the taking under the Fifth Amendment and isn't prohibited by the Thirteenth Amendment, the, I just want to suggest to the Court some of the implications of the argument that this is a taking. [fol. 107] In the first place, it seems to me that the same argument would apply to the ICC rules, to the Boynton Case, to the Federal Aviation Act, to all the regulation under those statutes which have already been passed on.

Judge Morgan: The Food and Drug Act.

Mr. Marshall: The Food and Drug Act. But these are the same kind, Judge Morgan, is my point. The Boynton Case involves exactly the same kind of regulation. If it's a taking of the Heart of Atlanta, it must be a taking of that restaurant in Virginia that was involved in the Boynton Case. The same thing is true of a restaurant in an airport. That's regulated in the same fashion under the Federal Aviation Act and I don't see how you could make the distinction based on the Fifth Amendment between that and this. And, you could say maybe commerce power doesn't extend to this and it does to that, but that's a different argument. This is that the Fifth Amendment itself is a limitation.

The Thompson Restaurant Case in the District of Columbia, if the Fifth Amendment prohibits this sort of regulation by the Federal Government, then the Thompson Restaurant Case which was unanimously decided by the Supreme Court upholding a prohibition against racial discrimination in restaurants and hotels in the District of Columbia must have been wrongly decided. The Fifth Amendment is applicable in the District of Columbia. The [fol. 108] practice prohibited or regulated by Congress is exactly the same. The kinds of establishments covered are exactly the same. The cases that deal with this are mostly

cited in our brief, but the point I wanted to make, in addition to that there are thirty states that have laws that impose this sort of regulation.

The Fourteenth Amendment also prohibits the taking of property without due process, and if it is a taking under the Fifth Amendment, it seems to me that the argument goes to all of these state laws.

Judge Tuttle: Have any of the state supreme courts held invalid this kind of open, open accommodations statutes under the Fourteenth Amendment except the Washington decision?

Mr. Marshall: Well, Judge Tuttle, the Washington decision dealt with an open occupancy housing statute.

Judge Tuttle: I understand.

Mr. Marshall: I believe that the, the opinion that is cited in the plaintiff's brief is a concurring opinion that the—

Judge Tuttle: But they did—

Mr. Marshall: —decision—

Judge Tuttle: —knock out the statute?

Mr. Marshall: They did, Judge Tuttle; but I think it was in terms of the distinction made in the statute between publicly financed housing and other housing.

[fol. 109] Judge Tuttle: Do you know of any supreme court in—any supreme court in any of the states of the United States that have held unconstitutional open accommodation statutes?

Mr. Marshall: No, I do not, Judge Tuttle. A number of them have been upheld, and there's a decision by the Supreme Court of the United States, unanimous, that upholds the validity of the Michigan Statute. That's the Bob-Lo Excursion Company, which is in 333 U.S.

In addition, this point that I have been making about the Fifth Amendment not being an additional limitation but sort of the other side of the coin is made in the case called Bowles against Willingham which involves the price regulation, which was argued in the taking of property under the Fifth Amendment. In that case, the court said this: A member of the class which is regulated may suffer economic losses not shared by others. His property may

lose the utility and depreciate in value as a result—as a consequence of regulation; but that has never been a barrier to the exercise of the police power, citing some state cases, and the restraints imposed on the national government in this regard by the Fifth Amendment are no greater than those imposed on the States by the Fourteenth Amendment. And then they cite some other cases involving federal regulations.

Our brief also cites a case called Central Eureka Min-
[fol. 110] ing Company decided in 1958 in which the argument was made that the closing of a gold mine under regulations on the sale and use of gold in this country was a taking, and the court held that that closing of the mine was not a taking under the Fifth Amendment, in view of the power of the Congress to deal with the problem.

That's all.

Closing Argument on Behalf of Plaintiff by Mr. Rolleston

Judge Tuttle: Mr. Rolleston?

Mr. Rolleston: If the Court please, I believe I have the closing,—

Judge Tuttle: Yes, sir.

Mr. Rolleston: —and I'll be very brief.

Judge Tuttle: Yes, sir.

Mr. Rolleston: Judge Hooper asked about the Act and what is really said. I'd like to point this out, that the Title II says that the Act covers any described establishment if it affects commerce. And then it says in the next wording, it says any of the ones listed in these subparagraphs One through Four affect commerce. So you have to look at the subsection, and it says any inn, hotel or motel or other establishment which provides lodging for transient guests. So under that interpretation I would say that any motel in the United States that takes a transient guest is covered by the Act.

Judge Tuttle: Unless it has less than five.

Mr. Rolleston: Unless it has less than five. Yes, sir.
[fol. 111] Now the facts in the case stipulated that the Heart of Atlanta Motel takes transient guests, and seventy-five percent of them, Judge Hooper, come from outside of

Georgia; and that the rest of the transients, they can be transients even in Georgia if they come from Savannah to Atlanta.

Judge Tuttle: So more than 75% are transients.

Mr. Rolleston: You can almost say under our announced policy practically a hundred percent of them are transients. But 75%, the part that we are trying to stipulate, came from outside of Georgia. So this Act then must be, must be taken to mean that any motel except the one the man lives in and has only five rooms, which isn't a motel; that's just a house where they take lodgers; that any motel as such or any hotel—and there are sixty thousand motels in the United States, if they take one transient guest, they are covered by this Act. And I'm, I'll state to the court, and I'm, I'm sure the Court will almost take judicial notice, there isn't a motel or hotel in the United States that doesn't take transient guests, so they are all covered by the Act. What it amounts to.

Now I would like to call the Court's attention also, it says for the purposes of this Act, which is Section II, commerce, in quotes, means travel, trade, traffic, commerce, transportation and communication among the several states. [fol. 112] Taken literally, that could mean that the Congress of the United States can control communications of individuals between the States. You say that's a far-fetched conclusion? When the commerce clause historically was put in the Constitution, it was put there because under the confederation that this government operated under for twelve years after the War of Independence before the Congress adopted—before the Constitution was adopted in the Constitutional Convention, for twelve years there was practically no trade between these States that had any order, and that is the reason the commerce clause was, as I understand it, put in the Constitution, to regulate trade between the States. That's the history of it. Now we have seen the commerce clause by all the cases I have cited and other counsel have cited for the Government in the various ways they have nibbled and nibbled and nibbled until they have taken the whole piece of cheese. And this is the last step. There isn't anything left of inter-

—intrastate commerce if this Act can be valid and enforced to the full extent, and it will be literally followed, I'll urge on the Court.

The one other point, counsel mentioned that the United States Supreme Court has recently upheld a Michigan decision upholding the Michigan public accommodations law. They did so, though, on the grounds that a state may pass such legislation, pass such valid law, but not the Congress. [fol. 113] Under the Fourteenth Amendment—it follows the ruling in the civil rights case which said the Fourteenth Amendment didn't prohibit a state from doing it, but the Congress couldn't do it.

Thank you.

Judge Tuttle: Anything further on either side? Well, for once counsel were not overly optimistic. We have a little time to spare. But we've announced the next case will be called at one o'clock—

Judge Morgan: One-thirty.

Judge Tuttle: Did we say one-thirty?

Judge Morgan: I believe so.

Judge Tuttle: One-thirty. The Court will take this case under advisement and announce the decision as promptly as possible. I'll ask this question, although this is a motion I guess for preliminary injunction, is there anything further to be proved or further argument to be made? Could this not be considered a final motion and trial on the permanent injunction? What do counsel have to say about that?

Mr. Rolleston: As far as the plaintiff is concerned, there's nothing else, Your Honor.

Mr. Marshall: We are in agreement on that, Judge Tuttle. I think the whole case is before the Court now.

Judge Tuttle: The Court will stand in recess until one-thirty.

[fol. 114] (Whereupon, Court was recessed at 11:10 a.m.)

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 115] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

HEART OF ATLANTA MOTEL, INC., a Georgia corporation,
Plaintiff,

—versus—

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY as the Attorney General of the United States, Defendant.

OPINION—July 22, 1964

This is a complaint filed by Heart of Atlanta Motel, a large downtown motel in the city of Atlanta, regularly catering to out of state guests, praying for a declaratory judgment and injunction to prevent the Attorney General of the United States from exercising powers granted to him under the Civil Rights Act of 1964, 42 U. S. C. A., Section 1971, as amended. The suit also attempts to obtain recovery from the United States for substantial damages alleged to result from a partial taking of the complainant's property without just compensation.

Conceding, as it does, that it is regularly engaged in renting sleeping accommodations to out of town guests, seventy-five percent of whom come from without the state of Georgia, and that it "has refused and intends to refuse to rent sleeping accommodations to persons desiring said accommodations, for several different reasons, one of which is based on the grounds of race, unless ordered by this Court to comply with the provisions of the Civil Rights Act of 1964," the suit attacks the constitutionality of the public accommodations sections of the Civil Rights Act as applied to such a motel.

Since this is a suit seeking an injunction against the enforcement of a Federal statute on the alleged grounds that it is in violation of the United States Constitution, a three-judge court was convened as provided for in 28 U. S. C. A., Section 2282.

[fol. 116] The Attorney General filed a counterclaim seeking, on behalf of the United States, a temporary and permanent injunction against future violation of the Civil Rights Act by the plaintiff. The case was set down for hearing, and after the introduction of oral testimony on behalf of the United States, the signing of stipulations between the parties, and oral statements made by counsel for the plaintiff in open court, it appeared that no factual issues remained. The parties also conceded in open court that the matter might be treated as a hearing on the petition for the final permanent injunction.

In the first place, the claim of the plaintiff for damages against the United States on the alleged ground of deprivation of property without just compensation alleges no grounds for relief, entirely aside from the question whether such alleged deprivation would be justified by reason of the power of Congress to enact this particular legislation. This is so, because such a claim for damages or recovery for value of property taken by the Federal Government must be asserted in the United States Court of Claims unless the amount sought is not in excess of $10,000. However, in the view we take of the law, such a suit is not maintainable in any event.

The real question presented by this complaint and counterclaim is whether Section 201(a), (b), (1) and (c) is constitutional.[1]

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[1] "Sec. 201.(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion or national origin.

"(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning

[fol. 117] In substance, this section of Title II declares the right of every person to full and equal enjoyment of the goods, services and facilities of any hotel or motel which provides lodging to transient guests if it contains more than five rooms for rent or hire. The section is a congressional ascertainment and declaration of the fact that such "an establishment affect(s) commerce within the meaning of this Title."

Article I, Section 8, of the Constitution provides:

> "Clause 1: The Congress shall have power . . . Clause 3: to regulate commerce with foreign nations and among the several states, and with the Indian tribes;" and Clause 18 "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . . ."

In United States v. Darby, 312 U.S. 100, 118, the Supreme Court said:

> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the grant of power of Congress to regulate interstate commerce. See McCullough v. Maryland, 4 Wheat 316, 421."

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of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

> (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence; . . . . .
>
> "(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); . . . ."

Thus, it need not be decided whether the outlawing of racial discrimination by a hotel accepting transient guests may be justified on the ground that it is actually in the stream of commerce. The power of Congress, when that body seeks to occupy the full extent of its powers under the Constitution, "extends to those activities intrastate which so affect interstate commerce . . . as to make regulation of them appropriate means to . . . the exercise of the granted power of Congress to regulate interstate commerce." Of course, the initial determination of whether the challenged regulation is such "appropriate means" is for Congress. Courts may not overturn such determination unless they conclude that under no reasonable theory could Congress find them "appropriate to the attainment" of its power to regulate commerce.

This Court, as recently as July 10, 1964, in the case of Marriott Hotels of Atlanta, Inc. v. Heart of Atlanta Motel, Inc., C.A. No. 8832, held that the operations of Heart of Atlanta Motel (1) are in the stream of commerce, and that, in any event, (2) such operations affect commerce so as to [fol. 118] subject it to Congressional regulation under the Sherman Antitrust Act. It being undisputed that in the adoption of the Civil Rights Act of 1964, Congress has seen fit to exercise its full power as granted it under the Constitution the scope of its operation in this field must, therefore, be taken to be at least as broad as that which it exercised in the adoption of the Sherman Act. Its scope is, therefore, also as broad as in the legislation affecting labor relations under the National Labor Relations Act. It is broader that that exercised by Congress in its regulation of wages and hours of services under the Wage and Hour laws.

In the specific field of hotel operations, the Supreme Court has ruled that the National Labor Relations Board could not lawfully follow a policy of refusing to take jurisdiction over unfair labor practices and other labor disputes in hotels and motels as a class. Hotels Employees Local No. 255 v. Leedom, 358 U.S. 99. Following that decision, the Court of Appeals of this judicial circuit in N.L.R.B. v. Citizens Hotel Co., 5 Cir., 313 F. 2d 708, overruled a con-

tention by the Citizens Hotel Company, operator of the Texas Hotel in Forth Worth, Texas, that its operations did not fall within the constitutional reach of the National Labor Relations Act because it was not either engaged in commerce, nor did its operations affect commerce. In arriving at that decision the court referred to the Supreme Court's opinion in National Labor Relations Board v. Reliance Fuel Oil Corp., 371 U.S. 224. That case dealt with an attack by the local fuel oil corporation on the jurisdiction of the Labor Board because, while most of the products sold by Reliance had been acquired from Gulf Oil Corporation and had been delivered to it from without the state of New York, they nevertheless had been received and stored in the state before sales were made to Reliance. It was thus contended that Reliance was not engaged in commerce nor were its operations such as to affect commerce within the constitutional sense. The Supreme Court said:

> "That activities such as those of Reliance affect commerce and are within the constitutional reach of Congress is beyond doubt. See e.g. Wickard v. Filburn, 317 U.S. 111."

The opinion also significantly quoted from the court's earlier decision in Polish Alliance v. Labor Board, 322 U.S. where, at page 648, it had said:

> [fol. 119] "Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local, but in the interlacings of business across state lines adversely affect such commerce."

It is clear that the attack by the complainant on the constitutionality of these sections of the Civil Rights Act must fail. It is equally clear that the United States is entitled to the injunction prayed for by it in its counterclaim. An injunction will issue in the following terms:

[fol. 120] ORDER—July 22, 1964

The plaintiff, Heart of Atlanta Motel, Inc., a corporation, its successors, officers, attorneys, agents and employees,

together with all persons in active concert or participation with them, are hereby enjoined from:

(a) Refusing to accept Negroes as guests in the motel by reason of their race or color;

(b) Making any distinction whatever upon the basis of race or color in the availability of the goods, services, facilities, privileges, advantages or accommodations offered or made available to the guests of the motel, or to the general public, within or upon any of the premises of the Heart of Atlanta Motel, Inc.

So that the plaintiff may have an opportunity to prepare its record for appeal and, if so advised, seek a stay of this order, it is Ordered that the foregoing injunction shall become effective twenty (20) days from the date hereof, on, to-wit, the 11th day of August, 1964.

This 22nd day of July, 1964.

Elbert P. Tuttle, United States Circuit Judge, Frank A. Hooper, United States District Judge, Lewis R. Morgan, United States District Judge.

[fol. 121] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

PERMANENT INJUNCTION—July 23, 1964

Pursuant to Order and Directions by the Three-Judge Court in the above stated case, and pursuant to Rule 58 of the Rules of Civil Procedure as amended January 21, 1963, the following Order in the above stated case on the prayers for temporary injunction is hereby entered.

ORDER

The plaintiff, Heart of Atlanta Motel, Inc., a corporation, its successors, officers, attorneys, agents and employees, together with all persons in active concert or participation with them, are hereby enjoined from:

(a) Refusing to accept Negroes as guests in the motel by reason of their race or color;

(b) Making any distinction whatever upon the basis of race or color in the availability of the goods, services, facilities, privileges, advantages or accommodations offered or made available to the guests of the motel, or to the general [fol. 122] public, within or upon any of the premises of the Heart of Atlanta Motel, Inc.

So that the plaintiff may have an opportunity prepare its record for appeal and, if so advised, seek a stay of this Order, it is Ordered that the foregoing injunction shall become effective twenty (20) days from July 22, 1964, to-wit, the 11th day of August, 1964.

This the 23rd day of July, 1964.

B. G. Nash, Clerk of Court.

[fol. 123] [File endorsement omitted]

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9017

[Title omitted]

NOTICE OF APPEAL—Filed July 22, 1964

Notice of Appeal of the decision of this Court in the above styled case dated July 22, 1964, to the Supreme Court of the United States is hereby given.

This 22nd day of July, 1964.

Moreton Rolleston, Jr., Attorney for Plaintiff.

[fol. 124] Certificate of Service (omitted in printing).

[fol. 125] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

[Title omitted]

AMENDED NOTICE OF APPEAL—Filed July 30, 1964

On July 22, 1964, plaintiff in the above styled case filed a Notice of Appeal. Plaintiff amends said notice as follows:

A.

1. Heart of Atlanta Motel, Inc., plaintiff in the above styled case, is the party taking the appeal.

2. On July 22, 1964, the three-judge court consisting of Judge Elbert P. Tuttle, Judge Frank A. Hooper and Judge Lewis R. Morgan, rendered a judgment in the above styled case and said judgment was entered of record on July 23, 1964 by B. G. Nash, Clerk of Court. This appeal of the plaintiff in the above styled case is from said judgment of said Court.

3. This appeal to the Supreme Court of the United States is taken under the statute known as the Civil Rights [fol. 126] Act of 1964. Section 101, sub-section (h) provides as follows:

> "An appeal from the final judgment of such Court (a three-judge court referred to in said sub-section), will lie to the Supreme Court" (parentheses added).

B.

4. The following portions of the record should be certified by the Clerk of the U.S. District Court, Northern District of Georgia, Atlanta Division, as necessary for this appeal:

(1) The Complaint for Declaratory Judgment, filed by the plaintiff on July 2, 1964.

(2) Amendment to Complaint for Declaratory Judgment, filed by the plaintiff on July 15, 1964.

(3) Statement of Issues, filed by plaintiff on July 15, 1964.

(4) Stipulation of Facts, agreed to by attorneys for plaintiff and defendants on July 16, 1964 and submitted to the Court at the hearing on July 17, 1964.

(5) Answer of the defendants, including Defenses and Counter-claims.

(6) Answer to Counter-claims and Response to Motion for Preliminary Injunction, filed by plaintiff on July 15, 1964.

(7) Certificate and Request for Three-Judge Court, filed by defendants.

(8) Notice of Motion and Motion for Preliminary Injunction, filed by defendants.

(9) Motion to Dismiss Second Counter-claim, filed by defendants.

(10) Notice of Motion and Motion to Dismiss, filed by defendants.

[fol. 127] (11) Judgment of the Court, dated July 22, 1964.

(12) Transcript of the hearing on July 17, 1964 from the fifteenth line on page 31, beginning with "Judge Tuttle", through the 17th line on page 41, said transcript containing all of the evidence presented to the Court at that hearing.

C.

5. The sole question presented by the appeal is the constitutionality of the Civil Rights Act of 1964. The Complaint, the Amendment to the Complaint, the Answer of the defendants, the Stipulation of Facts and the testimony of two witnesses, set forth hereinabove as part of the record, clearly describe the existing controversy and the contentions of the plaintiff. Briefly, the plaintiff contends that the Civil Rights Act of 1964 is unconstitutional because:

(1) Said Act violates the Thirteenth Amendment to the Constitution of the United States, in that, by requiring plaintiff to serve Negroes at plaintiff's motel against plaintiff's will, it subjects plaintiff to involuntary servitude, which is expressly prohibited by the Thirteenth Amendment.

(2) Said Act violates the Fifth Amendment to the Constitution of the United States in that it results in a taking of liberty and property without due process and for public use without just compensation, because it deprives plaintiff of its right to choose its customers and to operate its business as it sees fit, which was the right of the plaintiff possessed prior to the effective date of said Act.

[fol. 128] (3) Said Act exceeds the power to regulate commerce granted to Congress by Article I, Section 8, Clause 3, of the Constitution of the United States.

This 30th day of July, 1964.

Moreton Rolleston, Jr., 1103 Citizens & Southern Bank Bldg., Atlanta, Georgia 30303, Area 404 523-1566, Attorney for Plaintiff.

[fol. 129] Acknowledgment of Service (omitted in printing).

[fol. 130] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9017

HEART OF ATLANTA MOTEL, INC., a Georgia Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA and ROBERT F. KENNEDY, as the Attorney General of the United States of America, Defendants.

AMENDMENT TO NOTICE OF APPEAL, AS AMENDED—
Filed July 31, 1964

The Notice of Appeal, as previously amended on July 30, 1964, is further amended by deleting from paragraph A sub-paragraph 3 of the Amended Notice the words "Section 101, sub-section (h)" and substituting therefor "Section 206 (b)".

Moreton Rolleston, Jr., 1103 Citizens & Southern Bank Bldg., Atlanta 3, Georgia, JAckson 3-1566, Attorney for Plaintiff.

[fol. 131] Affidavit of Service (omitted in printing).

[fol. 132] Clerk's Certificate to foregoing transcript (omitted in printing).